

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA, Docket No. 10-739M-11  
Plaintiff,

v. Washington, D.C.  
**August 29, 2011**  
1:50 p.m.

DANIEL CHOI, **AFTERNOON SESSION**  
Defendant.

-----X

**BENCH TRIAL**  
BEFORE THE HONORABLE JOHN M. FACCIOLA  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 P-R-O-C-E-E-D-I-N-G-S

2 (1:50 P.M.; OPEN COURT.)

3 THE DEPUTY CLERK: Please remain seated. You can  
4 remain seated. The Court is back in session.

5 THE COURT: Proceed, counsel. Where's our witness?  
6 Come on up, Lieutenant.

7 MR. FELDMAN: Thank you, Judge.

8 THE COURT: Proceed.

9 LT. ROBERT LACHANCE,  
10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION (CONT'D.)

12 BY MS. GEORGE:

13 Q Lieutenant LaChance, before we broke for lunch, we were  
14 discussing the number of arrests that you've effectuated at  
15 the -- or participated in at White House sidewalk.

16 Focusing on those arrests, and the mass arrest  
17 procedure, could you tell the Court whether you, as a Park  
18 police officer, when you decide or authorize an arrest, do you  
19 consider the content of the protest or the demonstration, what  
20 the particular subject matter of the demonstration is?

21 MR. FELDMAN: Objection. Not only is that for this  
22 court to decide but it's really for the Supreme Court or the  
23 appellate court to decide. That is totally illegal.

24 THE COURT: Okay. Let me see if I understand the  
25 subject matter. Did you understand what the subject matter of

1 this particular demonstration was?

2 THE WITNESS: I had an idea, sir.

3 THE COURT: All right. Now, with reference to  
4 demonstrations, do you ever explore why they're there?

5 THE WITNESS: No.

6 THE COURT: Thank you.

7 MS. GEORGE: Well, Your Honor, the Government's  
8 particular question is, do you ever consider, in deciding to  
9 arrest individuals that are demonstrating on the White House  
10 sidewalk, what they are demonstrating about.

11 THE WITNESS: No.

12 THE COURT: That goes to a defense that has not been  
13 asserted yet.

14 MS. GEORGE: Your Honor, actually --

15 THE COURT: The objection is sustained.

16 MS. GEORGE: Actually --

17 MR. FELDMAN: Every time you make a ruling, Judge,  
18 she goes on and on. Where I come from, Manhattan, the  
19 Court's --

20 THE COURT: You're from New York?

21 MR. FELDMAN: Yes, sir.

22 THE COURT: I would have never guessed it.

23 (LAUGHTER.)

24 THE COURT: Because I'm from Brooklyn and you have a  
25 very strange accent.

1           MR. FELDMAN: I'm from Brooklyn, Your Honor. I  
2 can't tell this court how to run its court, but --

3           THE COURT: I appreciate it. Your point is well  
4 taken.

5           Let me see if I understand something. We all agree  
6 the First Amendment would preclude law enforcement from  
7 considering the content of a speaker's speech as being a  
8 grounds to differentiate among speakers. Now, that's not at  
9 issue now, is it? Is there some suggestion in your case that  
10 you locked up people who were in favor of prohibition as  
11 opposed to those against prohibition or whatever?

12           MS. GEORGE: No, Your Honor. But in analyzing the  
13 Court's first theory, the primary theory of the case --

14           THE COURT: I don't have a theory of the case.

15           MS. GEORGE: We do.

16           THE COURT: All right. Tell me what your theory is.  
17 You don't have to negate potential defenses until they are  
18 asserted. I haven't heard word one about a defense.

19           MS. GEORGE: I'm not negating any defense, Your  
20 Honor. What I'm trying to address are the issues that *United*  
21 *States versus Goldin* and *United States versus Poocha* address  
22 in those cases.

23           THE COURT: And what do they address?

24           MS. GEORGE: And in those cases they address the  
25 fact that in determining whether the Defendant failed to obey

1 a lawful order, the Courts in those cases considered whether  
2 the decision to arrest was content based.

3 And so I'm just trying to elicit evidence with  
4 regard to that particular issue because the law says that, in  
5 those cases, that the Court can consider that or may need to  
6 consider it in determining whether this defendant has been --  
7 is guilty of failure to obey a lawful order. So my -- the  
8 basis of my questions or the reasons for my questions are  
9 based in the law.

10 THE COURT: Well, not the law as you originally  
11 articulated when we last discussed this matter. Never have  
12 you advanced to me until today this notion that implicit in  
13 the simple wording of the regulation, which I'm looking at,  
14 quotes that the control of public movement and activities is  
15 necessary to maintain order or public service. There is a  
16 subtext by which you, in order to establish guilt of that  
17 offense, have to eliminate other potential defenses. I don't  
18 understand that.

19 MS. GEORGE: Your Honor, I guess I don't know how  
20 else to communicate to the Court. The Government is not  
21 addressing any defenses at this particular point in time. I'm  
22 addressing what the -- these courts have considered in  
23 determining whether the Government has established the  
24 elements of the crime and that this is --

25 THE COURT: That may be a factor in those decisions

1 but why is it a factor in this one? There isn't a shred of  
2 evidence that this -- that the people who made these arrests  
3 did so because they were motivated by the content of what  
4 these people were saying.

5 MS. GEORGE: I understand, Your Honor, and that may  
6 at some point in time be related to the selective prosecution  
7 point, but that's not what I'm focusing on. What I'm trying  
8 to focus the Court on is that in *Goldin* and *Poocha*, actually  
9 they aren't even discussing selective prosecution in those  
10 cases. They're discussing what the Government must put in the  
11 record for the Court to find that the Defendant is guilty of  
12 failure to obey a lawful order. And in those cases they  
13 discuss the fact that --

14 THE COURT: The theoretical possibility that one of  
15 the motivations behind giving the order was the perception by  
16 the person who gave the order that the speech was not to the  
17 liking -- his liking or the liking of the Government?

18 MS. GEORGE: No, the Court concludes that the speech  
19 was -- was not content based. It was protected by the First  
20 Amendment. And irrespective of that, the Court still can  
21 conclude that the Defendant failed to obey a lawful order.

22 THE COURT: I'll take it solely to answer this  
23 question. Were you aware of why these people were -- were  
24 demonstrating?

25 MR. FELDMAN: I interject the Court. He said he had



1 an idea. Asked and answered. He said, "I had an idea."

2 Asked and answered.

3 THE COURT: Okay. Just a minute. Were you talking  
4 about what I said or what he said?

5 MR. FELDMAN: When you asked him did you know what  
6 these guys were doing, he said "I had an idea, sir."

7 THE COURT: You had an idea. Was that a motivating  
8 factor in your decision?

9 THE WITNESS: No, it wasn't.

10 THE COURT: Thank you.

11 MS. GEORGE: Thank you, Your Honor.

12 Q (BY MS. GEORGE) Lieutenant LaChance, Government Exhibit  
13 No. 47 has been introduced -- Well, let me do it this way first.

14 I'm referring to Government's Exhibits 27 and 29.

15 MS. GEORGE: Your Honor, before the lunch break I  
16 showed these to Defense counsel and I believe he stated he was  
17 not objecting to their admissibility; is that correct,  
18 Mr. Feldman?

19 MR. FELDMAN: Right.

20 THE COURT: All right.

21 Q (BY MS. GEORGE) Lieutenant LaChance, I want to show you  
22 Government's Exhibits 27 and 29. In your testimony you  
23 mentioned that there was an individual taking a video of the  
24 events that day; is that correct?

25 MR. FELDMAN: Objection. He said he didn't even

1 remember. I think it --

2 THE COURT: What do you recollect about that, about  
3 the exhibit?

4 THE WITNESS: I do remember and I know that it was  
5 videotaped. What I said I don't remember is exactly how far  
6 behind me he was, whether he was 2 feet or 5 feet.

7 THE COURT: All right.

8 THE WITNESS: To me, it didn't matter.

9 THE COURT: Thank you.

10 Q (BY MS. GEORGE) And does Government Exhibits 27 or 29  
11 depict an individual or a law enforcement officer with a video  
12 camera?

13 A In 27.

14 Q Could you please take this red sticker that's marked with  
15 "video officer" and please place it near that individual or on  
16 that individual.

17 A (Doing so.)

18 Q And does Government's Exhibit 27 also show the car from  
19 which you gave the warning?

20 A Yes.

21 Q Could you put this red sticker which has "RL's car" on it  
22 on that vehicle.

23 A (Doing so.)

24 Q And does Government's Exhibit No. 29 depict your car  
25 where you gave your warnings from?

1 A Yes.

2 Q Could you please put the sticker that says "RL's car" on  
3 that vehicle.

4 A (Doing so.)

5 MR. FELDMAN: Without objection, Your Honor.

6 THE COURT: Be admitted.

7 (GOVERNMENT EXHIBITS 27 AND 29 ADMITTED.)

8 MS. GEORGE: Your Honor, may I publish them to the  
9 Court at this time?

10 THE COURT: Sure. Yeah.

11 Q (BY MS. GEORGE) Also, Lieutenant LaChance, you  
12 indicated -- Let me just ask you this. While you were there at  
13 the White House on November 15, 2010, did you observe any  
14 individual or individuals with any amplification devices?

15 A Yes.

16 Q Could you please describe who you saw and what type of  
17 amplification device they had or the person had?

18 A I saw two. One was a male in Army fatigues, white male.  
19 He was in Lafayette Park right on the inner perimeter line,  
20 and then there was a female also over to, I guess, on the west  
21 side, and she was the one who was -- as we addressed earlier,  
22 was -- had the content and speech. I guess it was --

23 THE COURT: She seemed to use the word "God" or --

24 THE WITNESS: Yeah. Yes, sir, that one.

25 THE COURT: The person who was a white male in Army

1 fatigues, was he wearing fatigues that were Government issue,  
2 that is, could you -- A lot of people wear camouflage. Could  
3 you see his name or was he wearing a beret?

4 THE WITNESS: Well, he appeared to be standard  
5 Army --

6 THE COURT: So he appeared to be GI, right?

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you.

9 Q (BY MS. GEORGE) And the Court also asked was he wearing a  
10 beret. Do you recall whether or not he was wearing a beret?

11 A I believe he was.

12 MS. GEORGE: I'm showing Defense counsel what's been  
13 marked as Government's Exhibit No. 35 that's previously  
14 provided.

15 MR. FELDMAN: It's a picture of Captain Jim, without  
16 consent, goes into evidence, Judge.

17 THE COURT: Captain Jim. Thank you.

18 MS. GEORGE: Your Honor, just for the record, the  
19 Government doesn't have any independent information of who  
20 this particular individual is.

21 MR. FELDMAN: I just indicated and stipulated to  
22 that, sir.

23 THE COURT: Captain Jim is --

24 MR. FELDMAN: Petrieangelo, Your Honor.

25 THE COURT: Petrieangelo.

1 MR. FELDMAN: P-i-e-t-i-a-n-g-e-l-o [sic], The  
2 Second.

3 THE COURT: Two names.

4 MR. FELDMAN: James Petrieangelo.

5 THE COURT: That's fine. It will be admitted. Let  
6 me see it.

7 (GOVERNMENT EXHIBIT 35 ADMITTED.)

8 MS. GEORGE: Okay. Thank you, Your Honor.

9 Q (BY MS. GEORGE) Lieutenant LaChance, you just described  
10 an individual in fatigues, white male with the bullhorn. Do you  
11 recognize this individual in Government's Exhibit 35?

12 A Yes. That's the man I was speaking about.

13 Q I'm showing you what's been marked Government's Exhibit  
14 31 and previously admitted.

15 MR. FELDMAN: I think without objection, Your Honor,  
16 and then, yes, Captain is in the back, too, Captain James  
17 Petrieangelo, II who's not an individual. He's a Captain.

18 Q (BY MS. GEORGE) Lieutenant LaChance, do you see a white  
19 male with fatigues on Government's Exhibit No. 31?

20 A Yes, I do.

21 Q And is that the same or different as the person that you  
22 identified?

23 MR. FELDMAN: Objection. The evidence speaks for  
24 itself. This court is not a machine.

25 THE COURT: That's all right. Let me take a look at

1 it.

2 Q (BY MS. GEORGE) Is it the same or different individual as  
3 you previously identified Government's Exhibit No. 35?

4 A The same person.

5 THE COURT: How do you know it's the same person? I  
6 don't see the bullhorn anymore.

7 THE WITNESS: Well, I'm just looking at the stature  
8 of the person, the haircut, the stance. It just appears to be  
9 the same person.

10 THE COURT: Now, by this point, in terms of  
11 chronology, that picture is first, and it's followed by this  
12 picture?

13 MS. GEORGE: Government's Exhibit 35.

14 THE COURT: 35 is before 31?

15 THE WITNESS: I would say 31 is the first picture  
16 and 35 is the second.

17 THE COURT: Okay. Thank you. And it's your  
18 testimony it seems to be the same person?

19 THE WITNESS: Yes, it appears to be the same person.

20 THE COURT: Thank you.

21 Q (BY MS. GEORGE) Now, I'm going to ask you some questions  
22 about Government's Exhibit 47. Earlier you told the Court that  
23 you made the decision to arrest the 13 individuals, including  
24 Mr. Choi that was standing on the ledge.

25 MR. FELDMAN: Objection, Lieutenant Choi.

1 THE COURT: Lieutenant Choi. All right. You made  
2 that decision. Go ahead, please.

3 Q (BY MS. GEORGE) Could you please tell the Court what  
4 charge did you arrest him for?

5 A Failure to obey a lawful order.

6 Q I'm handing you Government's Exhibit No. 47. Did you  
7 indicate the charge on that exhibit?

8 A Yes, I did.

9 Q Now, Government's Exhibit 47 also talks about, in the  
10 first paragraph, individuals being on the sidewalk with signs;  
11 is that correct?

12 A Yes.

13 Q And prior to November 15 -- I'm sorry, prior to the  
14 warnings being read on November 15, 2010, did you have any  
15 conversations with your supervisors and other law enforcement  
16 officials about what charges would be applicable to the  
17 conduct of the individuals that were standing on the ledge?

18 A Yes.

19 Q And could you please inform the Court what those  
20 discussions were and --

21 MR. FELDMAN: Objection. You know, I don't know how  
22 many different ways she wants to get hearsay through this  
23 court, but it's unethical in my humble opinion.

24 THE COURT: All right. You had a -- All right. You  
25 had a discussion with your superiors about what to charge,

1 okay.

2 THE WITNESS: Yes.

3 THE COURT: That's all I want to know, "yes" or  
4 "no," you did. The objection is otherwise sustained.

5 MS. GEORGE: Your Honor, it goes to course of  
6 conduct.

7 MR. FELDMAN: Objection, Judge. She's rearguing  
8 every ruling.

9 THE COURT: I don't know what that means. That is  
10 a -- Excuse me, Mr. Feldman. It is a statement by an out of  
11 court person, not available for cross, being offered for the  
12 trust of its contents, it's hearsay.

13 MS. GEORGE: Your Honor --

14 THE COURT: But at some point in this discussion, a  
15 decision was made to charge this particular offense; is that  
16 right?

17 THE WITNESS: Yes.

18 THE COURT: Was that your decision?

19 THE WITNESS: It was mine with, along with --

20 THE COURT: So you and these other people discussed  
21 it. These other people superior to you or inferior to you?

22 THE WITNESS: Both.

23 THE COURT: And were any of them -- was anybody part  
24 of this discussion who was not a Park police, such as an  
25 Assistance United States Attorney?



1 THE WITNESS: Well, yes, there was someone outside  
2 the Park police.

3 THE COURT: And was that person an Assistant United  
4 States Attorney?

5 THE WITNESS: No.

6 THE COURT: Was it a note from the Office of General  
7 Counsel of your office?

8 THE WITNESS: It was our solicitor.

9 THE COURT: Solicitor. Department of Interior?

10 THE WITNESS: Yes.

11 THE COURT: Thank you.

12 Q (BY MS. GEORGE) In those conversations, was a charge of  
13 failure to obey a lawful order discussed?

14 A Yes.

15 MS. GEORGE: Court's indulgence.

16 (PAUSE.)

17 Q (BY MS. GEORGE) Lieutenant LaChance, in effectuating a --

18 MR. FELDMAN: Your Honor, can my client sit next to  
19 me so he can tell me what was said?

20 THE COURT: Please, marshals don't want him to --

21 MR. FELDMAN: And my client is complaining that this  
22 particular marshal has been harassing Lieutenant Dan Choi all  
23 day.

24 THE COURT: I don't think he's harassing him.

25 Lieutenant, you've got to understand. Lieutenant,

1 please, listen to me. They are responsible for my safety,  
2 okay. So when you make a sudden movement, that concerns them,  
3 and like you're trained about sudden movement, so are they.  
4 So please be understanding, Lieutenant, okay.

5 THE DEFENDANT: I understand, Your Honor.

6 THE COURT: Thank you, sir.

7 Q (BY MS. GEORGE) As a shift commander lieutenant who  
8 effectuates arrests and makes decisions to arrest individuals on  
9 the White House sidewalk, are you aware of the legal authority  
10 that allows you to do that?

11 MR. FELDMAN: Incompetent.

12 THE COURT: Sustained.

13 Q (BY MS. GEORGE) Lieutenant LaChance, do you have the  
14 authority to arrest individuals on the White House sidewalk?

15 A Yes.

16 MR. FELDMAN: Objection, there has been nobody  
17 arrested on the sidewalk, Judge.

18 THE COURT: Well, you have -- you're a law  
19 enforcement officer, right, so you have the power to make  
20 arrests wherever they occur; isn't that right?

21 THE WITNESS: Yes, within my jurisdiction, sir.

22 THE COURT: And the Park police has a distinct  
23 jurisdiction?

24 THE WITNESS: Yes, in that particular area.

25 THE COURT: All right. And who has jurisdiction in

1 this area, you or someone else?

2 THE WITNESS: The United States Park Police has  
3 jurisdiction on the National Park Service property.

4 THE COURT: And that includes the front of the White  
5 House?

6 THE WITNESS: Yes, sir.

7 THE COURT: Thank you.

8 Q (BY MS. GEORGE) Do you also have the same arrest powers  
9 as the Metropolitan Police Department?

10 A Yes.

11 MR. FELDMAN: Objection.

12 THE COURT: I don't understand. What's the  
13 relevance of that, Ms. George?

14 MS. GEORGE: Your Honor, one of the elements of the  
15 charged crime is that the -- you have to be a Government  
16 employee or an agent who is authorized to maintain order and  
17 public control and movement. The authority of the Park police  
18 is specifically relevant in this case.

19 THE COURT: Indeed, but why is the authority of the  
20 Metropolitan Police Department relevant?

21 MS. GEORGE: Because it explains the authority that  
22 the Park police has. They are not just solely limited to the  
23 jurisdiction of the National Park Service. They also have  
24 arrest authorities that the Metropolitan Police Department has  
25 which would include other types of offenses besides federal

1 offenses.

2 THE COURT: Objection is sustained.

3 MS. GEORGE: Is it sustained with regard to the  
4 Metropolitan Police Department aspect of the question, Your  
5 Honor?

6 THE COURT: It's sustained as to the question you  
7 asked.

8 MS. GEORGE: At this time, Your Honor, the  
9 Government would move to introduce Government's Exhibits --  
10 Court's indulgence.

11 (PAUSE.)

12 MS. GEORGE: Government's Exhibits 40, 41, 42 and 43  
13 for identification purposes.

14 MR. FELDMAN: She is trying to give you cases,  
15 Judge. Objection.

16 MS. GEORGE: They're not cases, Your Honor.

17 THE COURT: Okay. Well, let's see what they are.

18 MR. FELDMAN: Yes, please.

19 MS. GEORGE: Your Honor, for the record, Government  
20 Exhibits 41, 42, 43 and 40 are federal statutes. The  
21 Government's asking the Court to take judicial notice of them  
22 and introduce them into evidence at this time.

23 MR. FELDMAN: This honorable court will always take  
24 judicial notice of every one of them, and I trust Ms. George  
25 is not going to give you inauthentic law.

1 THE COURT: All right. I'll take judicial notice of  
2 any statutes of the United States. You can put them in the  
3 record if you like. The objection is -- if there is an  
4 objection, it's overruled.

5 (GOVERNMENT EXHIBITS 40, 41, 42, 43 ADMITTED.)

6 MS. GEORGE: Okay. And also, just so the record is  
7 complete, Your Honor, Government's Exhibit 40 is a copy of a  
8 federal register which all regulations are connected to the  
9 Code of Federal Regulations.

10 THE COURT: I appreciate that.

11 MS. GEORGE: Your Honor, at this time the Government  
12 would just reserve the right to recall this witness in  
13 relationship to the motion to eliminate the false statement.

14 THE COURT: Cross-examine, please.

15 MS. GEORGE: Thank you.

16 CROSS-EXAMINATION

17 BY MR. FELDMAN:

18 Q Good afternoon, sir. How are you?

19 A Fine, sir.

20 Q What were they doing unlawful?

21 THE COURT: "They" being the demonstrators, the  
22 folks?

23 MS. GEORGE: Objection, Your Honor. He objected to  
24 the officer being able to explain what the charges were.

25 THE COURT: I overruled his objection, so this is

1 cross-examination. Please, go ahead.

2 A What they were doing unlawful was demonstrating in  
3 violation of the regulations for that area.

4 Q (BY MR. FELDMAN) 36 CFR 2.32 in particular, sir?

5 A You could refresh my memory with the statute in front of  
6 me, sir.

7 Q The one that talks about sidewalks, wildlife, that one.  
8 Were they doing wildlife?

9 THE COURT: It's a horse.

10 MR. FELDMAN: Doesn't matter. That's a horse of a  
11 different color.

12 A Yes, it's the CFR on failure to obey a lawful order, sir.

13 Q (BY MR. FELDMAN) What were they doing unlawfully?

14 A They were demonstrating in an unlawful manner.

15 Q How?

16 A By --

17 Q Tell me -- tell me what statute, regulation, ordinance,  
18 common law or any official law, not your decision, the law  
19 prohibits chaining oneself to the fence of the White House,  
20 which is not --

21 MS. GEORGE: Objection to the question.

22 Q -- on the sidewalk?

23 THE COURT: I think it's a question. Go ahead.

24 A All right. As I discussed with our solicitor, it  
25 violates two specific laws. It could fit into either

1 disorderly conduct or tampering, and based on that, we could  
2 order them to remove themselves from the fence or arrest them  
3 for failing to obey a lawful order.

4 Q (BY MR. FELDMAN) Okay. Which is it?

5 THE COURT: Can I just pursue that for a second?

6 MR. FELDMAN: Please.

7 THE COURT: You use the words "tampering." Could  
8 you please help me there, tampering with what?

9 THE WITNESS: Tampering with the fence, sir, based  
10 on the solicitor's advice.

11 THE COURT: I see. Go ahead, Counsel. I'm sorry.

12 MR. FELDMAN: Oh, no, I'm sorry, Judge.

13 Q (BY MR. FELDMAN) Okay. By the way, what is the name of  
14 the particular solicitor general you allegedly spoke with?

15 A That would be Randolph Myers.

16 Q And where is Mr. Myers -- where did this discussion  
17 allegedly take place?

18 A This was through e-mail correspondence.

19 Q Do you have those e-mails with you?

20 A The prosecution has it.

21 MR. FELDMAN: I call for the production of those  
22 e-mails, Judge.

23 THE COURT: Can I see them?

24 MS. GEORGE: Certainly, Your Honor. 24 and 25.

25 Your Honor, I will -- I will hand up the e-mail that

1 Lieutenant LaChance is referring to.

2 THE COURT: Let's make sure that they are the ones  
3 he's referring to. May I see them?

4 Please look at what's been handed to you as  
5 Government's Exhibit 25.

6 THE WITNESS: Thank you.

7 THE COURT: Take a moment, please, and look at it  
8 carefully.

9 THE WITNESS: Can I take it out, sir?

10 THE COURT: Sure.

11 (PAUSE.)

12 THE WITNESS: Yes, sir, it is the e-mail I'm  
13 referring to.

14 THE COURT: So this is the e-mail that Myers sent  
15 you in response to your request for his guidance?

16 THE WITNESS: Sir, it wasn't sent directly to me,  
17 but it was sent to me indirectly. But this is the guidance  
18 that dictated the procedures we followed.

19 THE COURT: I understand. Thank you very much.

20 Would you please show that to counsel. Do you need  
21 a moment to look at it, Counsel?

22 MR. FELDMAN: Yes, please. And can we get copies of  
23 this?

24 THE COURT: It's easy enough to get copies.

25 MR. FELDMAN: Thank you, Your Honor.



1 Q (BY MR. FELDMAN) So this was a -- I'm going to ask you  
2 questions as I read. I'll try to read fast.

3 THE COURT: No, don't. Please, take your time.  
4 Don't rush. Read it.

5 (PAUSE.)

6 MR. FELDMAN: I've read it, Judge, and again, thank  
7 you for having your staff make copies for us at their  
8 convenience. We'll give it to the --

9 THE COURT: It's been offered. It's in evidence, so  
10 give it to the clerk, please. Unless you want to use it  
11 during your --

12 MR. FELDMAN: Yes, I think I want to.

13 Q (BY MR. FELDMAN) Do you understand this stuff?

14 A I understand the gist of it, sir.

15 Q The gist of it. Good enough. The same as me. Basically  
16 this lawyer, Government lawyer told you that what they were  
17 doing may not technically violate the 7.96, the signage part  
18 of the regulations, correct? And you want to look at it  
19 yourself to see it?

20 A Yes, sir, that's my understanding.

21 Q And they told you, the lawyer told you that -- or  
22 communicated to you through a Mr. Hodge, is that correct,  
23 Mr. Hodge received this letter, correct, and he gave it to  
24 you, correct?

25 A As Detective Hodge, yes, sir.

1 Q Mr. Hodge. We call people "Mr." now.

2 THE COURT: Better call me "Judge."

3 MR. FELDMAN: Your Honor.

4 (LAUGHTER.)

5 Q (BY MR. FELDMAN) Now, he also told you, or Mr. Hodge,  
6 that the lawyer believed that -- believes that chaining oneself  
7 violates 2.34, failure to obey a lawful order, (a)(4) and  
8 (a)(2), but he will -- this lawyer, Mr. Myers, will defer to the  
9 prosecutors. The prosecutors, meaning Ms. George and  
10 Mr. Guerrero, her supervisor, correct? Everything I said so far  
11 correct?

12 A Are you asking me a question, sir?

13 Q Yes. I'm trying to do it sluggishly. Me and you are the  
14 same. The gist is basically all we get.

15 THE COURT: Maybe -- is it tough for you to get out  
16 the document here? If you want to look at the document --

17 THE WITNESS: I just wasn't sure of the exact  
18 question he was asking me.

19 THE COURT: If you need the document, just say so.  
20 We'll hand the document to you. Don't hesitate.

21 Q (BY MR. FELDMAN) Okay. This lawyer communicated to  
22 Mr. Hodge that he believed the chaining of oneself did violate  
23 the 2.34(a)(4) and the 2.31(a)(2), but he, we, will defer to the  
24 prosecutors' assessment of the facts in the particular case as  
25 to what charge they proceed with, correct?

1 A Yes, sir.

2 Q So basically Myers -- Mr. Myers, Solicitor General Myers  
3 tossed the ball to Ms. George and Mr. Guerrero, true or false?

4 A I can't answer that question, sir.

5 Q Well, look at the document yourself, as the judge  
6 suggested that you do.

7 MR. FELDMAN: May I approach, Judge?

8 THE COURT: Of course.

9 Q (BY MR. FELDMAN) Over here. And read it slowly. It's  
10 hard.

11 A Sir, I don't need to read it. What I'm saying is that I  
12 don't think that's my judgment call to say that he punted to  
13 the prosecutor.

14 Q Okay. How were you told that? How do you, sir, you  
15 judge -- By the way, you doing a lot of judging here, "yes" or  
16 "no"?

17 MS. GEORGE: Objection, Your Honor, relevance.

18 THE COURT: Sustained.

19 MR. FELDMAN: I withdraw the question.

20 Q (BY MR. FELDMAN) How do you understand the statement by  
21 Mr. Myers, Esquire, that, quote, While we believe that chaining  
22 oneself violates 36 CFR 2.34(a)(4) and 36 CFR 2.31(a)(2), we  
23 will defer to the -- one important thing -- to the prosecutors  
24 in the particular case, that is bunting --

25 THE COURT: I thought he used the word "punting."

1 Q (BY MR. FELDMAN) That's punting, kicking it down to them,  
2 "yes" or "no"?

3 A I looked at it as he gave me advice and he said the  
4 prosecutor can weigh in when he or she feels like.

5 Q So how did -- so you're saying under oath that the  
6 statement, quote, We will defer to the prosecutor's assessment  
7 of the facts of the particular case as to what charge they  
8 proceed with does not kick it down to them, "yes" or "no"?

9 MS. GEORGE: Objection, asked and answered.

10 THE COURT: You know, there's another reason to  
11 sustain it. You're asking him to accept the characterization  
12 he doesn't want to swallow. What he's saying is, as he  
13 understands the document, is what you read suggests to me is  
14 this is a general counsel within an agency giving, as he must,  
15 this guidance to the police officer but warning the officer  
16 that the ultimate call is the U.S. Attorney's Office.

17 MR. FELDMAN: Yes, sir.

18 THE COURT: That's standard protocol in this town,  
19 for reasons you can understand.

20 MR. FELDMAN: Yes, sir. In our town, too.

21 THE COURT: In everyone's.

22 MR. FELDMAN: In the United States.

23 THE COURT: Yes.

24 Q (BY MR. FELDMAN) Okay. Now, also, when he says, quote,  
25 And if a prosecutor elects to go forward with some other charge,

1 their changing the charge cannot negate the legality of the  
2 officer's initial charge.

3 You go along with that?

4 A I'm not sure what you're asking me to go along. Why  
5 don't you ask Mr. Myers.

6 Q You agree with that, "yes" or "no," or you don't know?

7 A All I know is he gave me advice on what charges are to --

8 MR. FELDMAN: Move to strike as nonresponsive.

9 THE COURT: I think he's struggling with it, and I  
10 think I understand why he's struggling with it. I mean,  
11 he's -- he sought guidance and he got it, and he was warned,  
12 however, that the guidance was limited because the ultimate  
13 call would be by the U.S. Attorney.

14 MR. FELDMAN: Okay. Fair enough. I beat the horse.  
15 One moment, Judge, about this.

16 (PAUSE.)

17 Q (BY MR. FELDMAN) Were you involved in the arrest of  
18 O'Orianka Kilcher?

19 MS. GEORGE: Objection, relevancy.

20 THE COURT: See if he can lay a foundation.

21 Q (BY MR. FELDMAN) The Peruvian lady that was arrested --  
22 I'm sorry.

23 Are you familiar with this woman, O'Orianka Kilcher,  
24 she doused herself with oil? That was pretty bad.

25 MS. GEORGE: Objection, relevancy.

1 THE COURT: He's going to say -- do you know --

2 Q (BY MR. FELDMAN) Are you familiar with what happened in  
3 the same time -- the same location as the instant case the night  
4 of Osama bin Ladin's death?

5 MS. GEORGE: Objection, relevancy, Your Honor.

6 THE COURT: Okay. I'll take it subject to a motion  
7 to strike. Are you at all familiar with it?

8 THE WITNESS: Am I familiar with what happened at  
9 the White House the night of Osama --

10 THE COURT: No, more specifically. There is  
11 something about a woman named O'Orianka Kilcher.

12 MR. FELDMAN: I withdrew that.

13 THE COURT: All right.

14 MR. FELDMAN: I withdraw that, Judge. I'm talking  
15 about Osama bin Ladin's death.

16 THE COURT: All right. Were you on duty the evening  
17 of -- in which the President announced that Osama bin Ladin  
18 was dead?

19 THE WITNESS: No, I was not there at the White  
20 House.

21 THE COURT: Thank you.

22 Q (BY MR. FELDMAN) Did you see it, pictures of it?

23 MS. GEORGE: Objection, relevancy, Your Honor.

24 THE COURT: Sustained.

25 Q (BY MR. FELDMAN) Did you -- any of your guys, people

1 under you involved in it?

2 MS. GEORGE: Objection, vague as to "guys" and  
3 relevancy.

4 MR. FELDMAN: He called them guys. His guys.

5 THE COURT: All right. Did the Park police have  
6 anything to do with any arrests that were made or not made  
7 that evening? Obviously, the Park police would be on duty at  
8 the White House the evening that occurred; is that right?

9 THE WITNESS: Yes, sir.

10 THE COURT: Thank you.

11 Q (BY MR. FELDMAN) And are you aware, "yes" or "no," under  
12 oath, are you aware if any arrests whatsoever were made the  
13 night that Osama bin Ladin was announced to be dead by President  
14 Obama?

15 A I don't know there was actually an arrest.

16 Q Did you see the pictures or the newscast of that great  
17 night?

18 MS. GEORGE: Objection, relevancy, Your Honor.

19 THE COURT: Sustained.

20 MR. FELDMAN: Well, I'm going to show him something.  
21 Maybe that will refresh his recollection.

22 MS. GEORGE: Your Honor, he didn't say he didn't  
23 remember. The Court sustained the objection.

24 THE COURT: That's right. He didn't say he didn't  
25 remember it.

1 Q (BY MR. FELDMAN) Oh. Are you saying under oath you don't  
2 remember that night?

3 MS. GEORGE: Objection, relevancy.

4 MR. FELDMAN: Goes to credibility, Judge.

5 THE COURT: Hold on just a second. You're trying to  
6 establish that on the evening of the death of Osama bin Ladin  
7 events occurred at the White House.

8 MR. FELDMAN: Yes, sir.

9 THE COURT: And on the premise of that, as you  
10 indicated in an earlier occasion, you're going to attempt to  
11 show that the decision made to arrest your client and the  
12 other 12 or 13 people was different from the decision not to  
13 arrest what occurred at the White House.

14 MR. FELDMAN: Precisely.

15 THE COURT: I've got it.

16 MR. FELDMAN: I understand.

17 THE COURT: All right.

18 Q (BY MR. FELDMAN) All right. Let's go to the issue about,  
19 did you ever look in these people's pockets to see if they had  
20 keys to the handcuffs?

21 A I did not.

22 Q Did you see any of your guys, to your knowledge, do that?

23 A I trusted my sergeant took appropriate measures to try  
24 and take the handcuffs off.

25 Q Did you ask anybody if they had keys to the handcuffs?



1 A I did not.

2 Q Did you know if any of your guys asked if they had keys  
3 to the handcuffs?

4 MS. GEORGE: Your Honor, objection at this point in  
5 time. We considering a defense of an impossibility now?

6 THE COURT: I will listen to it now. I'll strike  
7 it, all of this testimony. We just want to get the Lieutenant  
8 to finish his testimony.

9 And I think your last question, if I remember the  
10 question, is do you remember if anyone under your command  
11 asked any of the people who had chained themselves to the  
12 White House whether they had keys to the handcuffs for which  
13 they were wearing.

14 THE WITNESS: Can I explain this in not a "yes" or  
15 "no"?

16 THE COURT: Certainly.

17 THE WITNESS: Once again, I trust my sergeant when I  
18 tell him to put people under arrest and people are chained or  
19 handcuffed to the fence, that he's going to take the easiest  
20 measure, and if using a handcuff key to take off the handcuffs  
21 is the easiest thing, I would imagine that's what he would  
22 have done.

23 THE COURT: But you don't recall any discussion with  
24 the sergeant to that effect.

25 THE WITNESS: There is no reason for me to.

1 THE COURT: Explain something to me that I don't  
2 know. Each set of handcuffs is unique and has a distinct key?

3 THE WITNESS: No, sir.

4 THE COURT: Okay.

5 THE WITNESS: My handcuff key right here would  
6 open -- unless it's like some different kind of handcuff, but  
7 the standard handcuff that's out there, any handcuff key will  
8 open.

9 THE COURT: I didn't know that. Thank you.

10 Q (BY MR. FELDMAN) Did you ask them to -- or help them.  
11 Let me -- Compound question. Obviously, if they're still  
12 handcuffed to the fence, it's impossible for them to leave the  
13 masonry, true or false?

14 A False.

15 Q How can they leave the masonry if they're still  
16 handcuffed to the fence?

17 A They could have asked us to uncuff them and then they  
18 would have been escorted out.

19 Q Well, did you ask them to try to open it?

20 A No, I did not.

21 Q Did any of your guys or your sergeant ask them to try to  
22 open it?

23 A Again, I wasn't there when the -- I was not standing in  
24 the immediate vicinity when they effectuated the arrest.

25 Q You were in the same place that you were when you were on

1 the bullhorn, correct?

2 A Yes, but I was not in the immediate vicinity to listen to  
3 a private conversation at a close distance, so what my  
4 sergeant asked each particular person that was unchained from  
5 the sidewalk, I don't know.

6 Q What's your sergeant's name again?

7 A Sergeant Mark Adamichik.

8 Q Adamichik?

9 A Yes, sir.

10 MR. FELDMAN: Judge, I'm going to have to -- I don't  
11 know if I'm out of order here, but Sergeant Adamichik was here  
12 this morning and he told me he had personal, very serious  
13 issues, and I excused him. I'm going to have to re-subpoena  
14 the man.

15 THE COURT: We'll do it. We'll take care of it.

16 MR. FELDMAN: My mistake, Judge.

17 THE COURT: No problem. Go ahead.

18 Q (BY MR. FELDMAN) So to your personal knowledge, no effort  
19 was made to render it possible for my client to leave the  
20 premises other -- other than the -- than somebody cutting them  
21 with bolts, with a bolt cutter, correct?

22 A No, that's not what I'm saying.

23 Q What other efforts, other -- what other actions or  
24 efforts or causes were effectuated by the police to render it  
25 possible for my client to leave the fence without the police

1 having to resort to use a bolt cutter?

2 A Again, once -- if you're talking before the arrest or you  
3 talking during the arrest, sir?

4 Q Before the arrest.

5 A Before the arrest, when we cleared the White House  
6 sidewalk, if any one of them had wanted to leave, any verbal  
7 or nonverbal indication to any police officer would have  
8 prompted us releasing them and allowing them to go their way.

9 Q Why didn't you just ask them to please -- well, tell your  
10 sergeant to ask them please get out of here? Why didn't you  
11 say, Unlock yourself and get out of here? Why not?

12 A Sir, we followed a standard procedure.

13 Q Is it the Eichmann defense?

14 MS. GEORGE: Objection, Your Honor.

15 THE COURT: Sustained.

16 Q (BY MR. FELDMAN) Why didn't you just say, Guys, do you  
17 have the keys? Or why didn't you try to open -- In your  
18 opinion, is it easier to use your own key to open up a handcuff  
19 than to use a bolt cutter, "yes" or "no," or that's beyond your  
20 purview?

21 MS. GEORGE: Object, Your Honor, argumentative.

22 THE COURT: No. I think you agree it's easier to  
23 use the key than the bolt cutter?

24 THE WITNESS: I agree with that.

25 Q (BY MR. FELDMAN) It's safer?

1 A Yes.

2 Q It's less threatening to the public safety, including the  
3 demonstrator's safety and your safety?

4 A Yes.

5 Q Or your guys' safety? But the decision was made by  
6 someone else not to do it the safe way, "yes" or "no"?

7 A I believed that my sergeant made the decision to remove  
8 the handcuffs in the safest manner possible.

9 Q You just said, the judge just asked you, wouldn't it be  
10 safer to use the key?

11 A Sir, you didn't let me finish my answer.

12 Q Well, were you lying when you spoke to the judge?

13 MS. GEORGE: Objection, Your Honor.

14 THE COURT: Sustained. Sustained. Come on, let's  
15 go.

16 A Again, it's simple. Once I told my sergeant to  
17 release -- to uncuff the person and get them off, I trust that  
18 my sergeant took the appropriate measures possible to get them  
19 off the fence and place them under arrest. I imagine if he  
20 was able to simply uncuff the handcuff, that's what he would  
21 have done.

22 Q (BY MR. FELDMAN) But he didn't.

23 A He didn't, so my reasoning and my trust in him is that it  
24 was not possible to uncuff -- unlock the handcuff.

25 Q But you never saw anybody try?

1 A I'm saying that --

2 Q "Yes" or "no." I don't want -- I'm asking the question,  
3 sir.

4 MS. GEORGE: Objection, Your Honor.

5 Q (BY MR. FELDMAN) Did you see anybody try?

6 A Sir, I was not in the immediate vicinity to listen to the  
7 conversations that they had.

8 Q I didn't say "listen." Did you see anybody try?

9 A And I'm trying to answer the question.

10 Q No. The question is see with your eyes anybody take a  
11 key and try to stick it in the hole to try to open it up?  
12 "Yes" or "no", did you see that, or you don't know -- or "yes"  
13 or "no" or I don't know? Are you able to answer "yes" or "no"  
14 or I don't know?

15 A Sir, I did not see someone use a handcuff key because I  
16 was not in the immediate vicinity of them.

17 Q So you're too far away to see one human being take out a  
18 key, stick it in a hole and open it up; is that your testimony  
19 under oath, sir?

20 A What I'm saying is, no, it's not too far away from me to  
21 possibly see that.

22 Q But you didn't see it?

23 A What I'm saying is that I didn't see it. It doesn't mean  
24 it didn't happen.

25 Q So you never discussed this with anybody else both after

1 it happened, after this incident about this, about this issue  
2 with the handcuff key? The judge was asking the questions  
3 about that.

4 A Did I ever discuss why? Well, my sergeant told me later  
5 that there was glue or something in the handcuffs.

6 Q There was glue in the handcuffs?

7 A Or something in the handcuffs. There was glue.

8 Q Uh-huh. What kind of glue?

9 A I don't know.

10 Q Did you save that for evidence, or any of your guys save  
11 this alleged glue as evidence?

12 A No.

13 Q Wouldn't it be correct procedure in a potential tampering  
14 case to save the glue in the handcuffs, or is that out of your  
15 purview?

16 A No, I'd agree with you, sir.

17 Q Thank you.

18 MR. FELDMAN: I would ask for a missing evidence  
19 charge, Judge, but we'll get to that.

20 THE COURT: All right.

21 Q (BY MR. FELDMAN) Do you have the handcuffs?

22 A No, sir.

23 Q Do any of your guys have the handcuffs, or your sergeant,  
24 if you know?

25 A No, sir.

1 Q You don't know it or they don't have them?

2 A No, I'm saying that we don't have the handcuffs, sir.

3 Q What did you do with them?

4 A They were thrown away at the scene.

5 Q Was my client threatened?

6 A At what point, sir?

7 Q Any point.

8 A You could characterize it when he was taking out, off the  
9 fence after he was uncuffed --

10 Q Was that after he was arrested?

11 A You said it at the point.

12 Q I withdraw the question.

13 What point was he arrested?

14 A He was arrested -- well, he was under arrest when I gave  
15 the indication to Sergeant Adamichik to arrest the people.

16 Q Before that point, was my client threatening?

17 A No.

18 Q Was -- before that point, was my client -- Give me the  
19 statute. Let me go real slow here, okay. Fire fighting  
20 operations are not involved here, correct?

21 A That's right, sir.

22 Q Search and rescue operations are not involved here,  
23 right?

24 A No.

25 Q Wildlife management, except the horse, right? That's a



1 joke. No wildlife suffered here, right?

2 A No, sir.

3 Q Okay. So none of these things were present, correct?

4 A No, sir.

5 Q So, therefore, none of these things posed a threat to  
6 public safety, correct?

7 A That's right, sir.

8 Q And none of these things posed a threat to law  
9 enforcement actions, correct?

10 A No.

11 Q And none of these things posed a threat to emergency  
12 operations?

13 A No.

14 Q And there was no threat to public safety by my client  
15 until after -- I'm sorry, before he was arrested. You just  
16 said it.

17 A Was there no threat to public safety?

18 Q You just said my client was not threatening before he was  
19 arrested. You just said that, right?

20 A When? What you're saying is that there was no search and  
21 rescue, there was no horses, there was no wildlife, there was  
22 no threat to public safety. Well, he could have been a threat  
23 to himself, handcuffing himself to the fence.

24 Q So, did you think he was going to commit suicide or  
25 something?

1 A No.

2 Q Uh-huh. So he tried to commit plastic surgery on this  
3 statute?

4 MS. GEORGE: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. FELDMAN: I withdraw the question, Judge.

7 That's for this court to decide. Okay.

8 Q (BY MR. FELDMAN) Now, did -- Okay. Did he do anything  
9 that -- Choi, that posed a threat to -- that involved a threat  
10 to public safety or park resources?

11 A Aside from handcuffing himself to the fence, no.

12 Q And that, you admitted, very frankly and honestly, thank  
13 you, that it might have caused a problem to himself, to his  
14 safety?

15 A It could be a problem in general.

16 Q Could be, to himself?

17 A To himself.

18 Q Now -- I'm sorry?

19 A Yes, to himself, yeah, could be a danger.

20 Q To who?

21 A To himself.

22 Q You know he's a lieutenant; you know that. You knew  
23 exactly who he was, right?

24 MS. GEORGE: Objection, relevancy.

25 THE COURT: Well, you knew at the time he was

1 arrested he was wearing Army camouflage and a beret.

2 THE WITNESS: I knew what uniform he was wearing.

3 Q (BY MR. FELDMAN) Did you know who he was?

4 A No.

5 Q Did -- you stated under oath that you didn't know that he  
6 was a public figure?

7 A I'm stating under oath I have no idea who he was.

8 Q As you sit here today, you still have no idea who he is,  
9 if he's a public figure or not; is that true or false?

10 A What do you define as a public figure?

11 Q Please.

12 THE COURT: As a person who's, by his action,  
13 interjected himself into the public discourse about political  
14 matters or social matters or economic matters.

15 THE WITNESS: Well --

16 THE COURT: For example, a man who runs for office  
17 is obviously a public figure.

18 THE WITNESS: I have no idea.

19 THE COURT: The President is a public figure, those  
20 kinds of people.

21 THE WITNESS: I know now that he's involved in --  
22 involved in something. He's involved in his cause.

23 THE COURT: In his cause. Okay.

24 Q (BY MR. FELDMAN) Are you stating under oath that

25 Mr. Hodge did not brief you or discuss with you or any of your

1 guys or any of your, you know, co-associates, law enforcement  
2 people, there was not a buzz who Mr. Choi was?

3 A In the e-mail that I originally got did mention that  
4 Daniel Choi was one of the people, but I had no idea who he  
5 was.

6 Q And you're stating under oath that -- When was the first  
7 time that you realized he may have interjected himself into  
8 the public discourse?

9 A Who?

10 Q Choi.

11 A When was the first time -- Say that again, sir.

12 Q Let me -- when was the first time that you realized that  
13 he may have interjected himself, to use the judges's word,  
14 into the public discourse?

15 MR. FELDMAN: Got it right, Judge?

16 THE COURT: Sure.

17 A I have no idea when he interjected himself into public  
18 discourse.

19 Q (BY MR. FELDMAN) That's not the question. When was the  
20 first time you realized that he interjected himself into the  
21 public discourse?

22 A November 15<sup>th</sup>.

23 Q At what time?

24 A Well, around 1400, 1430 when he showed up at the White  
25 House.

1 Q Other than him showing up at the White House that day,  
2 it's your testimony under oath that you never realized he  
3 interjected himself into the public discourse before that day  
4 and never interjected himself into the public discourse after  
5 that day?

6 A Well, I can make the assumption that they named him in  
7 the e-mail as someone being arrested, that he did something to  
8 gain some attention.

9 Q Before he was arrested?

10 A Yes.

11 Q Uh-huh. And there is a lot of your guys that are  
12 ex-military people, correct?

13 MS. GEORGE: Objection, Your Honor, relevancy at  
14 this point in time.

15 THE COURT: I think -- let me see if I understand  
16 the question, and then I'll see if it's a legitimate question.

17 Are you aware, of your own personal information,  
18 whether many of the members of Park police at one point in  
19 their lives served in the United States military?

20 MS. GEORGE: Objection, relevancy.

21 THE COURT: Let me see if he answers the question.

22 THE WITNESS: Sir, I don't know the statistics.  
23 There are people who are military veterans.

24 THE COURT: Does that include yourself?

25 THE WITNESS: Yes, it includes me.

1 THE COURT: Thank you.

2 Q (BY MR. FELDMAN) Now, you heard my client and his friend  
3 say you earned your rank. Quote, they were saying over and over  
4 and over again to the much headache of everybody, "They earned  
5 that rank, don't take it off." "Yes" or "no"?

6 A Yes, they said that.

7 Q Okay. Isn't it true that they were saying that over and  
8 over again after Mr. Hodge ripped off Lieutenant Choi's  
9 insignia?

10 MS. GEORGE: Objection, Your Honor, lacks  
11 foundation, assumes facts not in evidence.

12 THE COURT: Who's Mr. Hodge?

13 MR. FELDMAN: Mr. Hodge is a detective from the Park  
14 department who is going to be testifying here, and rather than  
15 calling him out of order, Judge, I wanted to save time, so  
16 there is a connection. He's under subpoena.

17 THE COURT: All right. Did you see Hodge put his  
18 hands on Lieutenant Choi?

19 THE WITNESS: I don't have a recollection of that.

20 Q (BY MR. FELDMAN) You're stating that you didn't see  
21 Detective Hodge rip off Lieutenant Choi's insignia?

22 MS. GEORGE: Objection, asked and answered.

23 THE COURT: No, I think that's slightly different.

24 Did there ever come a point in time where you saw  
25 this man named Hodge move towards Choi and pull anything from

1 his clothing?

2 THE WITNESS: I don't know who searched Mr. Choi,  
3 but --

4 THE COURT: You didn't hear my question.

5 THE WITNESS: All right. No, I did not personally  
6 see.

7 THE COURT: Look at your own uniform, all right. I  
8 imagine that the things I'm looking at are sewn on, right?

9 THE WITNESS: No. These are pinned on, and that's  
10 why --

11 THE COURT: This one over here.

12 THE WITNESS: This is on -- this is pinned on, and I  
13 see where this is going. He was processed. So if he had  
14 something like this on, it was probably taken off. I didn't  
15 see it happen.

16 THE COURT: All right. You didn't see it happen.  
17 That's all we have to know. Hodge is going to be here  
18 eventually.

19 Q (BY MR. FELDMAN) Do you know why they were chanting,  
20 "They earned that rank; don't take it off"?

21 MS. GEORGE: Objection, Your Honor.

22 THE COURT: Overruled.

23 A No.

24 Q (BY MR. FELDMAN) No idea. Ex-military, sir, is that  
25 true? Is that your testimony under oath?

1       A     Sir, I'm telling you that what they were saying didn't  
2 really concern me.

3       Q     But you heard it.  Maybe you didn't hear it, maybe you  
4 didn't hear the words, which is it?

5       A     Sir, I've already testified that I heard that.

6       Q     Okay.  And you heard the words.  But you didn't even  
7 care.  It's your testimony under oath that it didn't -- I  
8 mean, you're a machine and you didn't care that these  
9 ex-military people are talking about ranks?  Come on.

10            THE COURT:  I don't know, is that a question?

11            MR. FELDMAN:  Yeah.

12            THE COURT:  All right.  Were you sensitive to the  
13 fact that any of the people who were working under your  
14 command had formed any opinion about these demonstrations with  
15 reference to the fact that they were military officers or  
16 military enlisted persons?

17            THE WITNESS:  The only thing I'm sensitive to, sir,  
18 is that everyone is treated the same way.  Everyone is  
19 processed the same way.

20            THE COURT:  Okay.  Thank you.

21       Q     (BY MR. FELDMAN)  Okay.  Did you realize that they were  
22 homosexuals, or you didn't even think about it?  Which is it?

23            MS. GEORGE:  Objection, Your Honor, relevancy.

24            THE COURT:  All right.

25            MR. FELDMAN:  Content.



1 THE COURT: All right. Were you aware of the fact  
2 that given the nature of what they were saying, that they were  
3 military personnel who were also homosexual and that's why  
4 they were there that day?

5 THE WITNESS: Can I just clarify?

6 MR. FELDMAN: No, answer the question, please.

7 THE COURT: Please, please, let him clarify it.  
8 It's my question. Go ahead.

9 THE WITNESS: My only clarification is if the  
10 Defense is asking if I knew that these 13 people were  
11 homosexual, is that what I'm being asked?

12 THE COURT: Yes.

13 THE WITNESS: No, I had no idea if they were  
14 homosexual or not.

15 Q (BY MR. FELDMAN) And you didn't -- Let me ask you, what's  
16 your highest grade of education?

17 A I have a bachelor of science.

18 Q And I bet you did pretty good, huh?

19 MS. GEORGE: Objection, Your Honor.

20 THE COURT: Sustained.

21 Q (BY MR. FELDMAN) Okay. You have any education after  
22 that?

23 A Yes, through my police force.

24 Q And you read that document by Myers, Esquire, correct?

25 A Yes.

1 Q And you understood the gist of it, right?

2 A Yes, sir.

3 Q Okay. The question is a very simple question. Let me  
4 just show the report. And I asked you, (reading) In  
5 consideration of the relevant circumstances surrounding the  
6 demonstration, is it your testimony under oath that you didn't  
7 realize that these were military personnel, gay military  
8 personnel protesting the "Don't ask, don't tell policy," "yes"  
9 or "no"?

10 MS. GEORGE: Objection, relevancy.

11 THE COURT: Overruled.

12 A Sir, you just asked me a different question now.

13 Q (BY MR. FELDMAN) Answer that question. I was on the  
14 debate team.

15 THE COURT: Let him finish. Now the question is --  
16 Yes.

17 THE WITNESS: Now it's a different question.

18 THE COURT: Indeed it is. You're quite correct.  
19 Please answer, if you can.

20 A You're asking me if I knew that this group was protesting  
21 about gays in the military and the policies.

22 Q (BY MR. FELDMAN) That's right.

23 A Yes, I knew that.

24 Q Okay. And you know, do you have any friends that are  
25 homosexuals?

1 THE COURT: Sustained.

2 (LAUGHTER.)

3 Q (BY MR. FELDMAN) Do you have any religious beliefs that,  
4 or do you follow any religious culture that says that  
5 homosexuality is a sin?

6 MS. GEORGE: Objection, relevancy, Your Honor.

7 THE COURT: Sustained.

8 Q (BY MR. FELDMAN) How do you feel in your heart about  
9 homosexuals?

10 MS. GEORGE: Objection, relevancy.

11 THE COURT: Sustained.

12 Q (BY MR. FELDMAN) Was my client ever on the sidewalk  
13 before he was arrested?

14 A Well, I did not personally see him on the sidewalk, but  
15 he had to walk on the sidewalk to get to it.

16 Q Obviously, obviously. Okay. You know, before he started  
17 engaging in behavior that may have been offensive that formed  
18 the underlying predicate for the 2.32(2)(a) [sic] arrest, was  
19 he on the sidewalk, "yes" or "no"?

20 A Again, it's the same answer I just gave you.

21 Q When you told him through the bullhorn, "Get off the  
22 sidewalk," was he on the sidewalk?

23 A He was on the ledge.

24 Q Was he on the sidewalk?

25 A I guess that's a point for law to decide whether that's

1 part of the sidewalk or not.

2 Q Please take note that -- because the only reason that  
3 this court cannot be reversed, with all due respect, is  
4 through credibility.

5 MR. FELDMAN: And I'm commenting on that, Judge,  
6 right now.

7 THE COURT: So be it. Go ahead.

8 MS. GEORGE: And objection to Mr. Feldman's  
9 comments. They are not a matter of a question or law.

10 THE COURT: The objection is sustained. But I  
11 think -- maybe I don't understand something, but to get to  
12 that ledge you have to walk on the sidewalk.

13 Q (BY MR. FELDMAN) Yes. But before he got to the ledge, he  
14 didn't do anything wrong, correct?

15 A I don't know. I wasn't there when he got to the ledge.

16 Q You didn't see him do anything wrong before he got to the  
17 ledge?

18 A No, I didn't, sir.

19 Q And nobody reported anything that he did wrong before he  
20 got to the ledge?

21 A That's right, sir.

22 Q Okay. So he got to the ledge and start doing stuff  
23 wrong, right?

24 A Yes, sir.

25 Q You told him to get off the sidewalk when he was doing

1 something wrong on the ledge, correct?

2 A Yes, sir.

3 Q How can he get off the sidewalk if he's not on the  
4 sidewalk?

5 MS. GEORGE: Argumentative.

6 MR. FELDMAN: That was terrible. I'm trying to --

7 Q (BY MR. FELDMAN) How can he get off the sidewalk if he's  
8 only doing the bad stuff on the ledge?

9 A Because I've given him opportunity to leave.

10 Q But you told them to get off the sidewalk when he's on  
11 the ledge, correct?

12 A Yes, sir.

13 Q How can you get off the sidewalk when you're not on the  
14 sidewalk?

15 A Point taken.

16 Q Thank you. You supervise the sergeant, right?

17 A What sergeant are you speaking of?

18 Q Adamichik?

19 A Yes, sir.

20 Q Okay. And since you supervise him, isn't it a fact that  
21 you're responsible for anything that happens or fails to  
22 happen?

23 MS. GEORGE: Objection, relevancy.

24 THE COURT: I think I can take -- I mean, if that's  
25 a question of law --

1 MR. FELDMAN: Judicial notice.

2 THE COURT: Well, I don't know if it's judicial  
3 notice, but if it's a matter of law, the agency relationship  
4 is there. I'm aware of it.

5 Q (BY MR. FELDMAN) Thank you. What the judge is saying is  
6 right on, right?

7 MS. GEORGE: Objection, Your Honor.

8 Q (BY MR. FELDMAN) You agree with what the judge just said?

9 THE COURT: You don't have to agree with me. You  
10 can disagree with me.

11 A There is nothing -- I see what you're saying. If I give  
12 the sergeant an order and he follows it, yes, there could be  
13 liability on me, but there's also built into our things, if I  
14 give him an order and it's not lawful, then he's not  
15 responsible to follow it, or if I give him an order and he  
16 does it in an unlawful manner, well, that's not the liability  
17 on me.

18 THE COURT: Very well done. Thank you.

19 Q (BY MR. FELDMAN) Now, if my client wasn't committing  
20 discon, you said he was committing tampering?

21 A Sir, Mr. Randy Myers --

22 Q Mr. Myers said he would be --

23 A Said there were two charges that could fall under, one of  
24 which is disorderly conduct.

25 Q And the other?

1 A Was under tampering.

2 Q Tampering with what?

3 A The fence.

4 Q Tampering with the fence. How can you tamper with the  
5 fence?

6 A Well, isn't it --

7 MS. GEORGE: Objection, Judge, calls for a legal  
8 conclusion.

9 THE COURT: Maybe you'll subpoena Myers.

10 MR. FELDMAN: Good idea, Judge. Thank you.

11 Q (BY MR. FELDMAN) Okay. You were the officer in charge of  
12 the recent -- more recent arrest of my client last week,  
13 correct?

14 MS. GEORGE: Objection, relevancy.

15 THE COURT: Wow, where did that come from?

16 MR. FELDMAN: That was last week. You didn't know  
17 about it?

18 THE COURT: No idea. You arrested him again last  
19 week?

20 MR. FELDMAN: These guys.

21 MS. GEORGE: Objection, relevancy.

22 THE COURT: Please, let me see if I understand what  
23 in the world is going on before I can rule.

24 There was a subsequent arrest of this gentleman.

25 THE WITNESS: Yes, sir.

1 THE COURT: Did you rearrest him, Officer, or did  
2 you command the unit that arrested him?

3 THE WITNESS: I commanded the unit that arrested  
4 him.

5 THE COURT: And did that take place in front of the  
6 White House again?

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you. Your question.

9 MR. FELDMAN: I'm sorry, Judge.

10 (PAUSE.)

11 Q (BY MR. FELDMAN) Okay. Now, without going too much into  
12 that, I'm sure I opened the door wide as this building myself,  
13 was the same procedure taken post-arrest with the second arrest  
14 as with the instant arrest, "yes" or "no"?

15 A Okay. Can you specify which two arrests you're talking?

16 Q Let me talk turkey here. Okay. First time, or not the  
17 first time, this time, the instant time, November 15, he's put  
18 through, after discussing this with the lawyer, through the  
19 federal system, correct?

20 A Yes.

21 Q Okay. And the second time when he's protesting, I'll  
22 leave that as a cliffhanger for something else, he gets a  
23 traffic ticket in municipal court or something, right?

24 MS. GEORGE: Your Honor, objection, that this is --

25 THE COURT: Where you pay a traffic ticket, but I



1 take it you issued a -- it's the Park police issued a summons  
2 for him to appear in superior court as opposed to this court;  
3 is that what happened?

4 THE WITNESS: That's correct, sir.

5 THE COURT: Thank you.

6 Q (BY MR. FELDMAN) Please tell this honorable court what  
7 was the content, if you know, of the arrest of the protest for  
8 which he was arrested last week or --

9 MS. GEORGE: Objection, relevancy.

10 THE COURT: I'm sorry, I don't understand. The  
11 conduct meaning why did the demonstrators come?

12 MR. FELDMAN: Yeah, the cause.

13 THE COURT: Could you tell why these people came to  
14 the White House that time that led to his arrest? Was it  
15 any -- were they shouting, were they holding signs, could you  
16 hear them?

17 THE WITNESS: Yes.

18 THE COURT: What were they saying?

19 THE WITNESS: It was a Tar Sands group against oil  
20 being piped.

21 Q (BY MR. FELDMAN) Environmental stuff?

22 A Yes.

23 THE COURT: Tar Sands?

24 MR. FELDMAN: Environmental against the pipeline,  
25 Judge.

1 THE COURT: Okay.

2 Q (BY MR. FELDMAN) So, let me get this straight. Through  
3 environmental stuff, these guys get a ticket, but for gay stuff,  
4 they have to go through the system and face federal charges and  
5 up to six months in jail, true or false?

6 MS. GEORGE: Objection.

7 THE COURT: Well, it's a rhetorical question. I  
8 think I got the point.

9 MR. FELDMAN: I think you got it, Judge.

10 Thank you very much, Your Honor. Thank you.

11 THE COURT: You're welcome.

12 MR. FELDMAN: Thank you, Officer LaChance --  
13 Lieutenant LaChance.

14 THE WITNESS: You said my name right, thank you.

15 MR. FELDMAN: Lieutenant LaChance. Thank you, sir.

16 REDIRECT EXAMINATION

17 BY MS. GEORGE:

18 Q Lieutenant LaChance, in reference to Mr. Feldman's  
19 questions about Mr. Choi's sexual orientation, do you know his  
20 sexual orientation?

21 A No.

22 Q Did you have any idea what it may or may not have been on  
23 November 15, 2010?

24 A No.

25 Q Did you ever direct any of the officers under your

1 command on November 15<sup>th</sup> 2010 to arrest Mr. Choi or any of  
2 the individuals on the ledge because of their sexual  
3 orientation?

4 A No, I did not.

5 Q Do you have any legal training or formal training in  
6 analyzing the law?

7 MR. FELDMAN: Objection. He did a pretty good job,  
8 Judge.

9 THE COURT: I would like to hear his answer to the  
10 question. The objection is overruled.

11 A In the police academy we're given multiple classes on the  
12 law, and then every year for our in-service requirements, we  
13 have to do legal updates.

14 Q (BY MS. GEORGE) You indicated on direct examination that  
15 you have been making arrests at the White House sidewalk, I  
16 believe you said from November -- from March 2010 till  
17 November 2010?

18 MR. FELDMAN: Beyond the scope of cross, Your Honor.

19 THE COURT: No, I think he -- I'll let him go back.  
20 Go ahead.

21 Q (BY MS. GEORGE) Is that correct?

22 A Since I became a lieutenant, I've been put -- since March  
23 2010, been put in charge of -- I'm sorry, March 2009, stand  
24 corrected, that's when I became lieutenant. That's when I  
25 started becoming in charge of things like that when it was

1 during my shift or I was directed to.

2 Q And when you say "things like that," what are you  
3 referring to?

4 A I'm sorry. Demonstrations that could involve mass  
5 arrests.

6 Q At the White House sidewalk?

7 A Yes.

8 Q And during that period of time from March 2009 to  
9 November 15, 2010, were you involved in any arrests of  
10 individuals or groups who actually chained or connected  
11 themselves to the White House fence?

12 MR. FELDMAN: Objection, that was asked and answered  
13 or attempted to be on direct. She's trying to get a second  
14 bite, Judge.

15 THE COURT: I think that's true. Correct me if it's  
16 wrong, Ms. George, but I thought he answered unequivocally  
17 that he had not had an occasion where anyone had to chain  
18 themselves to the White House in that precise period of time.  
19 Did I get it wrong?

20 MS. GEORGE: Yes. I didn't ask that question. I'm  
21 asking in response to Mr. Feldman's claim of selective  
22 prosecution.

23 MR. FELDMAN: What --

24 THE COURT: Please, please, just a minute. It was  
25 my recollection you asked him about that specific period of

1 time, and he indicated to us that he said he made over a  
2 thousand, and maybe my recollection is poor, but I thought  
3 your next question was how many of those that involved people  
4 chaining themselves to the White House, and he said none. Did  
5 I get that wrong?

6 MS. GEORGE: I do not believe I asked that  
7 subsequent question. He said he's had approximately a  
8 thousand arrests at the White House sidewalk. Now he's  
9 corrected the period of time. Originally he said March 2010  
10 to November 2010. Now he's corrected it to expand it that  
11 actually he became a lieutenant in March of 2009.

12 But I didn't ask the subsequent question about the  
13 nature of the specific arrests of those thousand.

14 THE COURT: I'm sorry. I have a different  
15 recollection, but I don't trust my recollection. I'm a lot  
16 older than you. What did you want to ask?

17 MS. GEORGE: I would like to ask him whether he  
18 arrested any individuals during that period of time that in  
19 addition to November 15<sup>th</sup>, 2010, that have chained  
20 themselves to the White House fence.

21 THE WITNESS: Yes, I have.

22 Q (BY MS. GEORGE) And could you please tell the Court on  
23 how many occasions -- how many arrests you were involved in  
24 before November 15<sup>th</sup>, 2010?

25 A At least three.

1 Q Okay. And were those three arrests -- and let me ask  
2 this. Are those three arrests all related to individuals who  
3 have connected themselves in some form or fashion to the White  
4 House fence?

5 A Two of them, and then another one to the lamppost.

6 Q Okay. So the one is the lamppost and one is the White  
7 House fence?

8 A Two on the White House fence.

9 Q Let's deal with the lamppost. Was it one individual or  
10 several individuals?

11 MR. FELDMAN: Judge, that's totally irrelevant, the  
12 lamppost --

13 THE COURT: Well, okay. That objection will be  
14 overruled. So, two to the fence, one to the lamppost?

15 THE WITNESS: Yeah. Yes, sir.

16 THE COURT: And they affixed themselves to those  
17 things and as a result they had to be taken away?

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 Q (BY MS. GEORGE) Okay. Let's focus on the arrest  
21 regarding the lamppost. Was that one individual or several  
22 individuals?

23 A That was one individual.

24 Q And what if anything did that individual do to connect  
25 him or herself to the lamppost?

1 A He had a heavy-duty chain wrapped around him and the  
2 lamppost.

3 Q And which lamppost are you referring to?

4 A The east side lamppost to the direct -- the first  
5 lamppost from the center portion of the sidewalk in the east  
6 direction.

7 Q Okay. So the lamppost that you're describing now, let's  
8 just go back to November 15, 2010 where you were standing at  
9 your cruiser. Could you please just tell the Court the  
10 lamppost that you're referring to now in reference to this  
11 particular arrest, is it to your left or to your right?

12 A To my left as I'm facing the White House.

13 Q Okay. And could you describe the chain of the person  
14 that connected themselves with?

15 A It's a heavy-duty chain, thick links.

16 Q Okay. And do you recall what the subject matter of that  
17 individual's protest was?

18 MR. FELDMAN: Objection.

19 THE COURT: No. Just "yes" or "no"; do you recall?

20 THE WITNESS: Yes.

21 Q (BY MS. GEORGE) Okay. And was it different or the same  
22 as the subject matter of the protest on November 15, 2010?

23 A It was different.

24 Q And what if anything do you and any other Park police  
25 officers do in reference to that individual chaining

1 themselves -- chaining him or herself to the light -- to the  
2 east lamppost?

3 A We removed the chain and arrested him.

4 Q And what did you arrest that individual for?

5 A The fail to obey a lawful order.

6 Q Okay. Let's move on to -- And let me just ask you this:  
7 The content of that individual's protest, did you consider  
8 that in making a decision to arrest that individual?

9 A No.

10 Q Now, previously you told the Court that there were two  
11 other individuals who were arrested and you were involved in  
12 their arrest; is that correct?

13 A Yes.

14 Q And those individuals chained themselves to the White  
15 House fence, correct?

16 A No.

17 Q What did they do?

18 A One had one of those Kryptonite bright locks with the  
19 U-shape wrapped around his neck and on the fence post and the  
20 other one just strung his leather pants belt through the  
21 fence.

22 Q Okay. Let's talk about the gentleman who used his  
23 leather pants belt to connect himself to the White House  
24 fence. Did you know the content of his protest?

25 A Yes.



1 Q And did that have anything to do with the decision of why  
2 you arrested him?

3 A No.

4 MR. FELDMAN: I would object to that, Judge. That's  
5 conclusory, you know. That's self-serving conclusion.

6 THE COURT: Okay. Well, were you aware of why he  
7 was doing this?

8 THE WITNESS: Yes.

9 THE COURT: All right. Did that have any impact on  
10 your decision to arrest him?

11 THE WITNESS: No, sir.

12 Q (BY MS. GEORGE) And let's go to the other individual who  
13 had the bike lock around his neck, and what portion of the fence  
14 did he connect himself to?

15 A The vertical metal bars of the fence, the White House  
16 fence.

17 Q Was it on the center portion of the White House sidewalk?

18 A It was in the center portion area, yes.

19 Q And where was the individual who used the pants belt,  
20 what portion of the sidewalk was he located in when he  
21 connected himself to the White House fence with his pants  
22 belt?

23 A In the center portion.

24 Q Now, going back to the individual with the bike lock, did  
25 you know why that individual was protesting?

1 A Yes.

2 Q Was it for the same or different reason than why the  
3 group on November 15<sup>th</sup>, 2010 was protesting?

4 A Different reason.

5 Q Did you weigh the reason of that protest into your  
6 decision to arrest the individual with the bike lock?

7 A No.

8 Q What was the individual with the bike lock arrested for?

9 A Fail to obey.

10 Q What?

11 A A lawful order, ma'am.

12 Q Now, I'm going to ask a question in reference to the  
13 individual with the bike lock, the individual with the pants  
14 belt, and the individual that was connected to the east fence  
15 post. Did you also have other officers similarly working with  
16 you as you had on November 15<sup>th</sup>, 2010?

17 A Yes.

18 Q And on each of those three occasions, did the Park police  
19 employ or use the mass arrest procedure to arrest those three  
20 individuals?

21 A Yes.

22 Q And during each of those arrests, did you ever direct any  
23 of your officers -- And let me ask this as a foundational  
24 question. Did -- on each one of those arrests, the fence  
25 post, east fence post, the pants belt and the bike lock, were

1 you the officer that had the authority to give the arrest  
2 authority?

3 A Yes.

4 Q And did you direct, pursuant to that authority, any of  
5 your officers participating in the mass arrest procedure to  
6 arrest those three individuals because of the content of what  
7 they were protesting about?

8 A No.

9 Q And did you ever order any of those officers to consider  
10 the content of the protest of the bike lock individual, the  
11 pants belt individual and the individual that was connected to  
12 the east fence post?

13 A No.

14 Q Did you know -- dealing with the individual who had --  
15 who connected himself with the pants belt, did you know the  
16 sexual orientation of that individual when you gave the order  
17 to arrest that person?

18 A No.

19 Q Did you know the sexual orientation of the individual  
20 that connected himself with the bike lock to the fence when  
21 you gave the order to arrest him?

22 A No.

23 Q Did you know the sexual orientation of the individual who  
24 connected himself to the fence post with the heavy chain when  
25 you gave the order to arrest him?

1 A No.

2 Q In reference to the individual with the heavy chain that  
3 was connected to the east fence post, how did the Park police  
4 disconnect him from the fence post?

5 A To the lamppost.

6 Q A lamppost, I'm sorry.

7 A The Metropolitan Police came and used a electric grinder  
8 or a grinder to cut the links.

9 Q In reference to the individual with the pants belt, how  
10 did you effectuate his release from the White House fence?

11 A I believe they just undid his pant belt.

12 Q And in reference to the individual who was connected to  
13 the White House fence with the bike lock, how did the Park  
14 police disconnect him from the White House fence?

15 A Again, we used the Metropolitan Police and we had to --  
16 they had to use a grinder to cut through the lock.

17 MS. GEORGE: No further questions at this time, Your  
18 Honor.

19 THE COURT: Thank you.

20 MR. FELDMAN: Judge, very briefly, please, and I'm  
21 not going to belabor this. I have something a little new and  
22 it may be beyond. I think you might like to hear it. Stop me  
23 if you don't.

24 RE-CROSS-EXAMINATION

25 BY MR. FELDMAN:

1 Q Remember the lady that -- I'm going to call her the Jesus  
2 lady, the red lady, the lady in red; remember her?

3 MS. GEORGE: Objection.

4 THE COURT: We saw it in the video, a woman, I saw  
5 her. She seemed to have some sort of amplification device.  
6 She was dressed in red, but as we discussed, she was talking,  
7 from what I could tell, about God and maybe she used the word  
8 "Jesus."

9 THE WITNESS: Yes, I remember her.

10 THE COURT: That's what he's talking about.

11 Q (BY MR. FELDMAN) Right. Did you arrest her?

12 A No.

13 Q Was she on the sidewalk?

14 A No, she wasn't.

15 Q Where was she?

16 A She was outside in the perimeter.

17 THE COURT: She was across the street.

18 Q (BY MR. FELDMAN) When you were saying if you don't get  
19 off the sidewalk, to my client, did you have any focus on the  
20 lady in red?

21 A No.

22 Q Was that lady committing disorderly conduct?

23 MS. GEORGE: Objection, Your Honor, relevancy.

24 MR. FELDMAN: It's selective prosecution, Judge.

25 THE COURT: Let me see if I understand something.

1           How did you -- Did you see the lady in red?

2           THE WITNESS: Yes.

3           THE COURT: Did it occur to you to arrest her for  
4 any reason?

5           THE WITNESS: No.

6           THE COURT: Explain to counsel why you did not.

7           THE WITNESS: My concern is with the White House  
8 sidewalk and the center portion of it, which is the laws we're  
9 enforcing.

10          Q       (BY MR. FELDMAN) Weren't there lots of other people on  
11 the sidewalk who were yelling?

12           MS. GEORGE: Objection. At what point in time?

13          Q       (BY MR. FELDMAN) At the point before my client was  
14 arrested after you got there?

15           THE COURT: Let's be careful. You've got two  
16 sidewalks. Here you got a sidewalk across the street, which  
17 is where -- and then we have the White House sidewalk itself,  
18 all right.

19           Now, in the video I saw people on both sides of that  
20 street. So, his question -- Go ahead, please, Counsel, ask  
21 your question.

22          Q       (BY MR. FELDMAN) Were there any people on the sidewalk  
23 near the White House?

24           MS. GEORGE: Objection, which sidewalk?

25          Q       (BY MR. FELDMAN) Near the White House.

1 A Sir, could --

2 THE COURT: Can we call that the White House  
3 sidewalk? That is, let's call the sidewalk that's in front of  
4 the White House where the events here took place, at least the  
5 area from the police officer's lieutenant's cruiser to the  
6 fence, let's call that the White House sidewalk, and let's  
7 call the other sidewalk the other sidewalk, okay.

8 Q (BY MR. FELDMAN) Were there people on the White House  
9 sidewalk?

10 A At what point, sir?

11 Q Before my client was arrested after you gave the  
12 warnings?

13 A Before your client was arrested but after the warnings?

14 Q Right.

15 A Was there anybody else on the White House sidewalk?

16 Q Yes.

17 A Yes.

18 Q What were they doing?

19 A They were police officers doing their official duty.

20 Q Besides them?

21 A No.

22 Q How about people on the other sidewalk, as the judge  
23 dubbed it?

24 MS. GEORGE: Objection, relevancy to the charge.  
25 That's not the White House sidewalk.

1 THE COURT: That's not the White House sidewalk, but  
2 the other sidewalk, the one that was in fact behind you.

3 THE WITNESS: On Lafayette Park.

4 THE COURT: In Lafayette Park. Were there people  
5 yelling or screaming with or without amplification, were they  
6 shouting or doing anything else?

7 THE WITNESS: Yes.

8 Q (BY MR. FELDMAN) Including Captain James Petrieangelo,  
9 correct?

10 A I don't know who that gentleman is, unless you're talking  
11 about -- are you talking about the tall --

12 Q The tall guy with the black beret.

13 A Okay. If you're saying that's his name, yes.

14 Q You're telling us under oath you don't know who that guy  
15 is?

16 A I know I identified a man in uniform. You said he was  
17 Captain Jim. I'm --

18 Q Are you on Facebook?

19 MS. GEORGE: Objection, Your Honor. Could you  
20 please let him --

21 Q (BY MR. FELDMAN) Do you ever Google stuff?

22 MS. GEORGE: Objection, relevancy.

23 THE COURT: Sustained.

24 MR. FELDMAN: He's lying. That's the relevancy.

25 THE COURT: Counsel, let me see if I can explain



1 something. You showed the lieutenant two photographs.

2 MR. FELDMAN: Yes.

3 THE COURT: And you said that's Captain Jim.

4 MR. FELDMAN: Right.

5 THE COURT: And then you proceeded to tell us his  
6 full name.

7 MR. FELDMAN: Right.

8 THE COURT: It's my understanding that that was the  
9 first time the lieutenant learned that man's name.

10 MR. FELDMAN: That's what he said. I submit he's  
11 not credible.

12 THE COURT: All right.

13 MR. FELDMAN: That's for this court and only this  
14 court to decide.

15 THE COURT: All right.

16 MR. FELDMAN: But if you don't have a lawyer who  
17 tries to cross-examine somebody, there's no effective way,  
18 Judge.

19 THE COURT: I understand. But the point I'm trying  
20 to -- you're trying to get the Lieutenant to say something  
21 because you do not believe, or you would ask me not to believe  
22 that in open court, when he saw the photo, that was the first  
23 time he learned it from you and you alone that that man's name  
24 was Jim Petrieangelo.

25 MR. FELDMAN: Perfectly stated.

1 THE COURT: All right. Go ahead.

2 Q (BY MR. FELDMAN) Is that the truth or is that what you  
3 practiced rehearsing saying?

4 MS. GEORGE: Objection, Your Honor, argumentative.

5 THE COURT: It's argumentative.

6 Is that the truth?

7 A All right. So what you're saying is did I know who  
8 Captain Jim, the man I identified was before that day?

9 Q (BY MR. FELDMAN) Right.

10 A I had no idea who he was.

11 Q Do you ever Google people?

12 MS. GEORGE: Objection, relevancy.

13 THE COURT: Sustained.

14 Q (BY MS. GEORGE) Do you Google anything?

15 MS. GEORGE: Objection, relevancy.

16 THE COURT: Sustained.

17 Q (BY MR. FELDMAN) Do you Google my client?

18 THE COURT: Sustained.

19 Q (BY MR. FELDMAN) Well, do you ever read the newspaper?

20 MS. GEORGE: Objection, relevancy.

21 THE COURT: Sustained.

22 Q (BY MR. FELDMAN) You ever watch CNN?

23 MS. GEORGE: Objection, relevancy.

24 Q (BY MR. FELDMAN) You ever watch Rachel Maddow?

25 MS. GEORGE: Objection, relevancy.

1 MR. FELDMAN: He's lying, Judge.

2 THE COURT: Okay. But --

3 MR. FELDMAN: Somebody who says he doesn't know --

4 THE COURT: Assuming that's so, what does it have to  
5 do with Rachel Maddow?

6 MR. FELDMAN: Because it came out in Rachel Maddow.

7 THE COURT: I don't know anything about Rachel  
8 Maddow.

9 MR. FELDMAN: But I assumed that you, before you  
10 came into this court, had heard of Lieutenant Dan Choi because  
11 you read the newspapers and all.

12 THE COURT: No. The first time I met Lieutenant  
13 Choi is when the people came into court. I had no idea who he  
14 was.

15 MR. FELDMAN: And you had no idea who Lieutenant Dan  
16 Choi was, never heard of this individual.

17 THE COURT: I assure you.

18 MR. FELDMAN: I can never accuse the Court of lying.

19 THE COURT: No, I mean, I don't know. He was one of  
20 the people who came in that day. You have the transcript.  
21 That was the first time I saw him.

22 MR. FELDMAN: Heard of him.

23 THE COURT: Or heard of him.

24 MR. FELDMAN: Then I have no need for further  
25 questions, in that case.

1 THE COURT: Okay. Thank you.

2 MS. GEORGE: Your Honor, I have a few followup  
3 questions.

4 THE COURT: All right. Let's go. Followup to what  
5 he said?

6 MS. GEORGE: Yes, sir, that's correct.

7 THE COURT: Except for Rachel Maddow.

8 MS. GEORGE: Your Honor, I will not be discussing  
9 that.

10 (LAUGHTER.)

11 FURTHER REDIRECT EXAMINATION

12 BY MS. GEORGE:

13 Q Lieutenant LaChance, Mr. Feldman, in his recross, made a  
14 comment that you ordered his client to leave the sidewalk.  
15 Did you order him to leave the sidewalk or did you order him  
16 to leave the area?

17 A I ordered him to leave the area.

18 MR. FELDMAN: Objection, it says sidewalk.

19 THE COURT: No. If you want, I think what she's  
20 going to do is to show him what he read from, so let's see  
21 what that says.

22 Q (BY MS. GEORGE) I'm handing you Government's Exhibit  
23 No. 47.

24 Does Government's Exhibit No. 47 memorialize the  
25 order that you gave on three occasions to Defendant

1 Lieutenant -- Defendant Choi as well as the other individuals  
2 on the ledge on the White House sidewalk?

3 A I'm sorry, I was reading this. I apologize.

4 Q Does Government's Exhibit No. 47 memorialize the order  
5 that you gave on three occasions to Defendant Choi on  
6 November 15, 2010, when he was standing on the ledge in the  
7 perimeter?

8 A Yes.

9 Q And does it say -- What does it say?

10 A It says, "You must leave the closed portion of the White  
11 House sidewalk now. All persons remaining on the closed  
12 portion of the White House sidewalk will be arrested."

13 And third warning, "This is your third and final  
14 warning. If you do not leave now, you will be arrested."

15 MR. FELDMAN: Sidewalk.

16 THE WITNESS: No. It says, "If you do not leave  
17 now, you will be arrested."

18 THE COURT: I see the distinction. The second and  
19 third, okay, I think we've got it. I see it.

20 MS. GEORGE: Thank you. No further questions, Your  
21 Honor.

22 THE COURT: All right. Before anybody can think of  
23 another question, please get down. Thank you, Lieutenant.

24 THE WITNESS: You're welcome.

25 THE COURT: You may call your next witness.

1 MS. GEORGE: Your Honor, the Government calls  
2 Officer Fermaint to the stand.

3 THE COURT: Who?

4 MS. GEORGE: Officer Fermaint.

5 Your Honor, at this point in time, may we have a  
6 personal break for five minutes?

7 THE COURT: All right. I'll take our break early.  
8 I was not going to take it till 3:30. How about 3:20  
9 everyone, please.

10 MS. GEORGE: Does the Court need the tables?

11 THE COURT: Do I need the what?

12 MS. GEORGE: The tables. Do we need to remove our  
13 items?

14 THE COURT: No.

15 MS. GEORGE: Okay. Thank you.

16 THE COURT: We are just coming back and resume the  
17 trial.

18 MS. GEORGE: I didn't know if you were going to use  
19 the courtroom between now and the break, Your Honor.

20 THE COURT: I didn't have any plans to.

21 MS. GEORGE: Okay.

22 THE DEPUTY CLERK: This court stands in a brief  
23 recess.

24 (A BRIEF RECESS WAS TAKEN.)

25 THE DEPUTY CLERK: Please remain seated. The Court

1 is back in session. Please come to order.

2 THE COURT: Please call your next witness.

3 MS. GEORGE: The Government calls Officer Michael  
4 Fermaid to the stand.

5 THE COURT: Officer, please.

6 THE DEPUTY CLERK: Stand right here for me, please,  
7 and raise your right hand.

8 (WITNESS SWORN BY THE DEPUTY CLERK.)

9 THE DEPUTY CLERK: Thank you. Please be seated,  
10 sir.

11 MICHAEL FERMAINT,  
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. GEORGE:

15 Q Sir, could you please state your name for the record.  
16 Spell your first and your last name.

17 A First name is Michael, M-i-c-h-a-e-l; last name,  
18 Fermaid, F-e-r-m-a-i-n-t.

19 Q Where do you work?

20 A I work for the United States Park Police.

21 Q Are you a law enforcement officer with that agency?

22 A Yes, ma'am.

23 Q And how long have you been an officer with the Park  
24 police?

25 A Eight years and eight months.

1 Q And what -- what's your current rank at this point in  
2 time?

3 A I'm sorry?

4 Q What's your current rank?

5 A A S.W.A.T. officer.

6 Q And as a member of the S.W.A.T. unit, what are your  
7 responsibilities?

8 A Our responsibilities range from escorts, serving warrants  
9 to handling demonstrations.

10 Q And do you have any particular responsibilities in  
11 reference to the White House sidewalk?

12 A Yes, ma'am.

13 Q And I made reference to the White House sidewalk. Do you  
14 know what particular area I'm referring to when I use that  
15 term?

16 A Yes. You're referring to the south side of 1600.

17 Q I would like to have you give the Court some sense of  
18 your experience with the Park police. You said you've been a  
19 Park police officer for eight years.

20 How many of those years have you spent -- Let me  
21 just can it this way. Have you participated in mass arrest  
22 procedures of individuals at the White House sidewalk?

23 A Yes, I have.

24 Q And how many of those years during your eight years have  
25 you done that?



1 A I've been doing that the last probably year-and-a-half or  
2 so.

3 Q And could you please estimate for the Court approximately  
4 how many mass arrests you've participated in in reference to  
5 demonstrations on the White House sidewalk?

6 A I'm going to say approximately six.

7 Q And is there a procedure that's associated with the term  
8 "mass arrest" in reference to the White House sidewalk?

9 A Yes, ma'am.

10 Q And could you generally explain to the Court your  
11 understanding of that procedure.

12 A The procedure, once I -- when we come in, they ask during  
13 roll call, they'll say there's going to be one demonstration  
14 down at the White House sidewalk, so we prepare by gathering  
15 all the tools we're going to need. We go down there. The  
16 lieutenant tells us -- tells us from there what we have, and  
17 from there we -- everyone has a responsibility, and he'll tell  
18 us during the roll call what's our responsibility.

19 Q Okay. Now, before we talk about what your  
20 responsibilities were on November 15<sup>th</sup>, 2010, you said you  
21 gathered tools that you're going to need. What items are you  
22 going to need?

23 A Yes. Those items are what they call flex cuffs, we need  
24 those, just markers, tags, things we're going to need during  
25 an arrest. If we're going to have an arrest, we like to have

1 that with us.

2 Q And when you say "tags," what kind of tags are you  
3 referring to?

4 A Just tags so we can tag each -- you use markers to mark  
5 and then these tags where we can just -- well, each bag has a  
6 tag on them just saying what they are. So if there are mass  
7 arrest kits, everything is together in this mass arrest kit  
8 and it will say on the tag "mass arrest kit" on each bag, so  
9 we know what we're grabbing and then we'll look through it to  
10 make sure everything's there.

11 Q I want to direct your attention to November 15<sup>th</sup>, 2010.  
12 Did you have the opportunity to participate in a mass arrest  
13 of individuals in reference to a demonstration on the White  
14 House sidewalk?

15 A Yes, ma'am.

16 Q Do you recall approximately what time you arrived to the  
17 White House sidewalk on November 15, 2010?

18 A Approximately -- it was approximately about -- I'm going  
19 to say about 1:30 or so.

20 Q And did you have a briefing like you described generally  
21 is done in reference to the demonstration of November 15<sup>th</sup>,  
22 2010?

23 A Yes, we had roll call.

24 Q Okay. And what if anything were you told in roll call  
25 about what you were going to be doing? Let me --

1 MR. FELDMAN: Objection.

2 Q (BY MS. GEORGE) Let me finish the question, please,  
3 Officer, for me. And can I ask the question?

4 THE COURT: Please, ask the question.

5 Q (BY MS. GEORGE) Okay. What if anything were you told in  
6 reference to the demonstration that was going to occur at the  
7 White House on November 15<sup>th</sup>, 2010?

8 MR. FELDMAN: Objection.

9 THE COURT: Overruled because I'm not going to  
10 accept it for the truth of the contents but for another  
11 purpose so I could ascertain what kind of preparations were  
12 taken and whether there was any evidence of selective  
13 prosecution. Go ahead.

14 Q (BY MS. GEORGE) Please answer what information you  
15 received from any officers or your supervisor in reference to  
16 what was done at the demonstration at the White House sidewalk  
17 on November 15<sup>th</sup>, 2010.

18 A Okay. What you're asking -- what you're asking me is  
19 what is done or what was going on down at the White House  
20 sidewalk is what you're asking me during roll call?

21 Q No, I'm asking you what information you were told by any  
22 other officers or your supervisors --

23 A Okay.

24 Q -- in the debriefing in reference to the demonstration at  
25 the White House sidewalk on November 15, 2010?

1 A About that that there was going to be a demonstration and  
2 the amount of people that are expected to be arrested if they  
3 were in violation. So they give you the amount of people  
4 generally, about how many are down there, and that, you know,  
5 that's it. Then we respond down there.

6 Q You said you arrived, I think you said, about -- what  
7 time did you say you arrived? I can't remember.

8 A About 1:30 or so.

9 Q Okay. When did this briefing occur in relationship to  
10 the time that you arrived?

11 A I can't recall, but I'm -- I can't really recall exactly  
12 what time it was.

13 Q Was it before 1:30?

14 A Yes, it was before 1:30.

15 Q Was it in the morning or in the afternoon?

16 A I want to say it was in the afternoon.

17 Q And you said that they provided some numbers, or did they  
18 give you any other details such as why the individuals would  
19 be demonstrating?

20 A No.

21 MR. FELDMAN: Again, that's leading and hearsay.

22 THE COURT: Well, it's not hearsay. Remember my  
23 ruling. I want to see the selective prosecution question.  
24 What were you told about the people, if anything?

25 THE WITNESS: All I recall is that there were people

1 going to be demonstrating and the approximate how many people  
2 were down there -- were going to be down there. That's all I  
3 recall, Your Honor.

4 THE COURT: So there was no reference, as far as you  
5 knew, to what they were -- why they were demonstrating.

6 THE WITNESS: No.

7 THE COURT: Who they were, how they would be dressed  
8 or anything like that?

9 THE WITNESS: (Nodding in the negative.)

10 Q (BY MS. GEORGE) Could you please answer for the record.

11 A No.

12 Q So you arrived around 1:30, correct?

13 A Yes, ma'am.

14 Q And what did you do when you arrived to the White House  
15 sidewalk on November 15, 2010?

16 A We waited for certain instructions.

17 Q Did you receive any instructions?

18 A Yes.

19 Q What instructions did you receive?

20 A What I was going to be doing; what my tasks were.

21 Q And what tasks did you receive?

22 A My task, I was going to be alongside the individuals that  
23 were lined up -- that were demonstrating this, just line up  
24 beside them so I can hear the -- his -- his verbiage during --

25 Q Whose verbiage?

1 A Lieutenant LaChance.

2 Q And what verbiage are you referencing?

3 A His commands. Like that was my -- there was two -- I'm  
4 lined up alongside of them so I can hear Lieutenant LaChance's  
5 commands.

6 Q Okay. And you said "alongside of them." Tell the Court  
7 what people you're referring to when you say "them"?

8 A It's the 16 -- the 13 demonstrators.

9 Q And where were these 13 demonstrators?

10 A They were lined up on the fence of the White House,  
11 chained -- on the White House sidewalk on top of the cement  
12 ledge that's on the White House and they were handcuffed to  
13 the fence.

14 Q Okay. If you're facing the White House fence.

15 A Right.

16 Q Where did you line up?

17 A When --

18 Q Let me finish the question, Officer Fermaint, please.

19 A Okay.

20 Q Where did you line up in reference to the individuals  
21 that were handcuffed to the White House fence?

22 A Right side.

23 Q And could you please tell the Court -- Let me just ask it  
24 this way. So you lined up on the right side of those  
25 individuals, is that correct; you stated that, right?

1 A Yes.

2 Q So is there a person to the left or the right of you?

3 A If I'm lining -- if I'm facing the White House, ma'am?  
4 Can you rephrase? Say that again.

5 Q Okay. Which way were you facing when you went to the  
6 fence to stand next to the individuals?

7 A I was on the --

8 THE COURT: Towards the White House or away from the  
9 White House, towards the statue of Jackson?

10 THE WITNESS: I was standing away from the fence.

11 THE COURT: Facing the White House or facing the --

12 THE WITNESS: Facing, yeah, away from the White  
13 House.

14 THE COURT: Facing away from the White House.

15 THE WITNESS: That's right. My back was to the  
16 White House.

17 Q (BY MS. GEORGE) Okay. And you also said you were  
18 standing next to the individuals that were on the ledge who were  
19 attached to the fence; is that correct?

20 A That is correct.

21 Q So if you're facing away from the White House, are those  
22 individuals to your right or to your left?

23 A They are to my right.

24 Q And how close were you to the person that was closest to  
25 you?

1 A I was approximately three feet.

2 Q Could you please take this blue sticker, which has your  
3 first and last initial on it, and place it where you were  
4 standing that you just discussed on this map, close to the  
5 White House fence.

6 A I would say around here approximately. Maybe right about  
7 here. This is the fence right here.

8 Q Okay. Officer, just one second. Officer, let me ask a  
9 question as to where the fence was. Could you please tell us  
10 on Government's Exhibit No. 1, do you see where the fence  
11 would be located?

12 A Looks like the fence would be right here. Well, this is  
13 the sidewalk probably right about here.

14 Q Okay. Officer Fermaint, for the record --

15 A This is the street, Pennsylvania --

16 Q Can you have a seat.

17 MR. FELDMAN: Judge, they are mumbling. I couldn't  
18 hear.

19 MS. GEORGE: I am asking him to have a seat at this  
20 point in time.

21 THE COURT: Have a seat. And you're not going to  
22 ask him to put it in.

23 MS. GEORGE: I'm not going to ask him with regard to  
24 that question, Your Honor.

25 Q (BY MS. GEORGE) Officer Fermaint, in preparation for your



1 testimony today, did you have the opportunity to look at a video  
2 of the events at the White House fence on November 15, 2010?

3 A I have.

4 Q Okay. Now, before I ask you about that video, you said  
5 that your purpose was to stand there to see if you could hear  
6 the commands, I think, is the term that you used from  
7 Lieutenant LaChance; is that correct?

8 A Yes.

9 Q Okay. Did he give any commands while you were standing  
10 in the position that you previously described?

11 A Yes, ma'am.

12 Q And do you recall the content of those commands or the  
13 nature of them?

14 A Yes.

15 Q What was it?

16 MR. FELDMAN: Objection.

17 THE COURT: No, overruled. I think it's a verbal  
18 act. It's not hearsay. Go ahead.

19 A There were -- he stated his name and the agency and also  
20 said that they were in violation and that they had to leave,  
21 they had to leave the area.

22 Q (BY MS. GEORGE) What else?

23 A Also, yes, or else they would be arrested.

24 Q How many times did he give that command?

25 A Three times.

1 Q And based upon the position where you were standing, were  
2 you able to hear the commands?

3 A Yes.

4 MS. GEORGE: Your Honor, at this time the Government  
5 would request permission to play Government's Exhibit No. 2.

6 THE COURT: Again?

7 MS. GEORGE: Yes, so that Officer Fermaint can  
8 see --

9 MR. FELDMAN: Cumulative, Your Honor.

10 THE COURT: I'm going to let you do it, but I'm not  
11 so sure I understand the point.

12 (VIDEOTAPE PLAYED.)

13 Q (BY MS. GEORGE) Okay. Officer Fermaint, I have paused  
14 Government's Exhibit No. 2. Are you shown in this frame of  
15 Government's Exhibit 2 at this point in time?

16 A Yes.

17 Q Could you please describe where you are.

18 A I am to the -- Looking at the screen, I am on the far  
19 right there, approximately three feet from the person dressed  
20 all in black.

21 MS. GEORGE: Your Honor, for the --

22 MR. FELDMAN: I'm going to stipulate that he's going  
23 to say he heard it from where he was, save you about 20  
24 minutes.

25 THE COURT: No, that's all right. She's doesn't

1 have to accept your stipulation. Go ahead.

2 MS. GEORGE: And Your Honor, I just want to  
3 memorialize for the record the portion of Government's Exhibit  
4 2 showing approximately where he was standing. It's shortly  
5 before the video begins and all the 13 individuals have their  
6 backs to the position where Lieutenant LaChance previously  
7 testified he was giving the warnings from.

8 THE COURT: The record will so reflect.

9 (VIDEOTAPE PLAYED.)

10 Q (BY MS. GEORGE) Okay. Officer Fermaint, we just played a  
11 portion of Government's Exhibit No. 2 where Lieutenant LaChance  
12 gave the first warning. You used "the command." Is the warning  
13 that you just heard, the term "command" you used the same or  
14 different from the warning that Lieutenant LaChance gave?

15 A I'm sorry?

16 Q You used the term "command."

17 A Yeah. And basically what it is, it's a warning. I say  
18 "command." It's a warning.

19 Q Now, in this frame of the video, are you shown standing  
20 in any position on the White House sidewalk in relationship to  
21 where the individuals were on the ledge?

22 MR. FELDMAN: Judge, the best evidence is the  
23 videotape.

24 THE COURT: Well, whenever there is circumstantial  
25 evidence -- so I think she's trying to illustrate his

1 testimony. The objection is overruled.

2 Where were you standing? Is that you standing where  
3 we're looking?

4 THE WITNESS: That's me, yes.

5 THE COURT: All right.

6 Q (BY MS. GEORGE) And are you standing in approximately the  
7 same position that you previously testified to you were standing  
8 in before the first warning was given?

9 A Yes.

10 Q And at this point in time, after the first warning was  
11 given, were you able to hear or not hear the warning?

12 A I was able to hear the warning.

13 MS. GEORGE: Court's indulgence.

14 (PAUSE.)

15 Q (BY MS. GEORGE) Officer Fermaint, without telling us --  
16 Let me just ask you this. Could you hear whether or not the  
17 individuals on the ledge were saying anything at this point in  
18 time?

19 A Can you repeat the question?

20 Q Were they saying anything at this point in time?

21 A I just remember -- I recall them chanting.

22 Q Okay.

23 MS. GEORGE: I have no further questions at this  
24 time, Your Honor.

25 THE COURT: Thank you.

## CROSS-EXAMINATION

1  
2 BY MR. FELDMAN:

3 Q Good afternoon, sir. Your name was on the yellow summons  
4 or ticket, correct?

5 A Yes.

6 Q And you checked the box, did you not, that it goes --  
7 this case was to go to federal court rather than superior  
8 court, correct?

9 A Yes.

10 Q How many -- let me ask -- or how many protest arrests  
11 have you been involved in in the last couple of years, about?

12 MS. GEORGE: Objection, assumes information not in  
13 evidence.

14 THE COURT: Have you been involved in arrests that  
15 came to this court as opposed to superior court?

16 THE WITNESS: Is this the first one, you're asking  
17 me?

18 THE COURT: No, listen.

19 THE WITNESS: I'm sorry.

20 THE COURT: Have you been in a situation where a  
21 demonstration led to arrests and those arrests were prosecuted  
22 in the superior court as opposed to this court?

23 THE WITNESS: No.

24 MR. FELDMAN: Thank you. Thank you, Judge, for  
25 doing that.

1 THE COURT: That's all right. Thank you very much,  
2 Officer. You may stand down. You may call your next witness.

3 MS. GEORGE: Thank you. The Government calls  
4 Officer Stoudamire to the stand.

5 THE COURT: Officer Stoudamire, please. Thank you.  
6 Officer, right over here, please.

7 THE DEPUTY CLERK: Stand right here for me, sir.  
8 (WITNESS SWORN BY THE DEPUTY CLERK.)

9 THE DEPUTY CLERK: Thank you. You may be seated.  
10 You can adjust the mic.

11 JEROME STOUDAMIRE,  
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. GEORGE:

15 Q Sir, could you please state your name for the record  
16 spelling your first and your last name.

17 A Yes. My name is Jerome Stoudamire.

18 Q Could you please spell your first name and spell your  
19 last name.

20 A First name is spelled J-e-r-o-m-e. Last name is  
21 S-t-o-u-d-a-m-i-r-e.

22 Q Where do you work?

23 A I'm currently assigned with the United States Park  
24 Police, Special Weapons and Tactics Team.

25 Q Do you-all often refer to that as the S.W.A.T. team?

1 THE WITNESS: Yes, Your Honor. We refer to that as  
2 the S.W.A.T team.

3 THE COURT: You can just refer to her. Thank you.

4 A Yes.

5 Q (BY MS. GEORGE) How long have you been a member of the  
6 U.S. Park Police?

7 A I've been a member for approximately 24 years.

8 Q And how long have you been assigned to the S.W.A.T. team?

9 A I would be, that would be 22 years with the S.W.A.T.  
10 team.

11 Q Could you briefly describe your duties for the Court as a  
12 member of the S.W.A.T team?

13 A Yes. What we do is we -- some of the main things we do  
14 is we assist the Secret Service with the protection of the  
15 President and the Vice President of the United States, and one  
16 of the other main things we do is we are required to monitor  
17 demonstrations around the White House.

18 Q And during your tenure as a U.S. Park police officer and  
19 member of the S.W.A.T team, have you had the occasion to  
20 participate in arrests of individuals engaging in  
21 demonstrations at the White House sidewalk?

22 A Yes, I have.

23 Q And could you please approximate for the Court how many  
24 arrests you've been involved in, I think you said in 22 years?

25 A In 22 years, oh, I would have to say maybe a couple

1 thousand.

2 Q And in those thousand arrests, have you become --

3 MR. FELDMAN: 2,000.

4 THE COURT: Okay. Go ahead. Please.

5 MR. FELDMAN: It's couple thousand.

6 THE COURT: Yeah. He said couple thousand. Please  
7 go ahead.

8 MS. GEORGE: I thought that's what I said. If I  
9 didn't, I'm sorry, Your Honor.

10 THE COURT: Don't worry about it.

11 Q (BY MS. GEORGE) In your experience in those couple of  
12 thousand of arrests, have you become familiar with what has been  
13 known as the mass arrest procedure?

14 A Yes, I have.

15 Q And can you please generally explain your understanding  
16 of that procedure to the Court.

17 A My understanding of the mass -- understanding of mass  
18 arrest procedure is if there is -- if there is what we  
19 perceive is a violation, what we do is we have a whole  
20 procedure whereby we will basically rope off the area. We  
21 have an official involved with giving warnings because it's  
22 our job to give them at least the ability to leave that  
23 particular area. If they fail to do so, then we effect the  
24 arrests based on our policy.

25 Q I want to direct your attention to November 15, 2010.



1 Did you have an occasion to participate in the arrest of  
2 individuals associated with a demonstration at the White House  
3 sidewalk?

4 A Yes, ma'am, yes, I did.

5 Q Could you please explain to the Court how you received  
6 information to report to the White House sidewalk.

7 A I had heard information over the radio of demonstrators  
8 at the White House sidewalk. At that point I was instructed,  
9 I believe it was either by my sergeant or my lieutenant --  
10 that I don't recall -- to respond to the White House to  
11 monitor the situation.

12 Q And what if anything -- Did you actually go to the White  
13 House sidewalk?

14 A Yes, ma'am, I did.

15 Q And approximately what time did you arrive?

16 A Best of my knowledge, I would think I arrived somewhere  
17 around perhaps 1:30 in the afternoon.

18 Q And did you receive any instruction once you arrived  
19 there regarding what if anything you were supposed to do in  
20 reference to any demonstrations?

21 A Yes. When I arrived, it looked as though we were in the  
22 process of conducting our mass arrest procedures, so I was  
23 instructed to stand near the demonstrators.

24 Q And you're referencing demonstrators. Who were these  
25 people -- Let me just say, ask you this way. Where were these

1 people that you were referencing?

2 A I saw approximately 13 people along the metal fence line  
3 of the White House.

4 Q And what if anything were they doing when you arrived?

5 A When I arrived, I saw that they were -- they had actually  
6 handcuffed themselves to the -- to the grates of the fence  
7 line.

8 Q And you said that Park police were in the process or in  
9 the middle of the mass arrest procedure. I think that's the  
10 term you used. Could you please explain to the Court, if you  
11 recall, where in the process Park police was.

12 A By the time I arrived, the individuals were already at  
13 the fence line and already had chained themselves.

14 Q Okay.

15 A Handcuffed themselves to the fence line.

16 Q And at this point in time, do you know whether there were  
17 still -- whether there were other individuals that weren't  
18 handcuffed to the fence near the fence?

19 A To the best of my knowledge, by the time I arrived, that  
20 area had already been cleared out.

21 Q Okay. And was there a perimeter set up when your  
22 arrived?

23 A Yes, there was.

24 Q And how was the perimeter designated?

25 A The perimeter was designated by yellow police line tape

1 which said "Police Line, Do Not Cross."

2 Q And where was that yellow tape, could you explain for the  
3 Court, in relationship to the White House fence?

4 A We have a section referred to as the center section of  
5 the White House. There are two -- there are two light poles  
6 on each side of the center section and that's where we had the  
7 police line tape.

8 Q How is the police line tape connected to these light  
9 posts in relationship to the White House fence?

10 A I'm not quite understanding. I don't quite understand.

11 Q Physically, how does the Park police connect the police  
12 tape to the White House fence and the light post?

13 A What we do is we tie a temporary knot to the fence. We  
14 string that to the light pole. We wrap it around the light  
15 pole and then we extend that across Pennsylvania Avenue to  
16 Lafayette Park.

17 Q So once you observed that the perimeter had been set up,  
18 were you told specifically what your role was going to be?

19 A Yes, I was.

20 Q What was that?

21 A My role was to stand near where the individuals had  
22 handcuffed themselves to the White House sidewalk in order to  
23 hear the warnings.

24 Q And what specifically, where were you told to stand?

25 A From my recollection, if you are facing the White House,

1 I would have been to the left.

2 Q And how close were you to the individuals that were  
3 handcuffed to the White House fence?

4 A I'd say I was approximately 5 feet.

5 Q And what were you supposed to be able to hear from that  
6 position?

7 A We do a series of -- Well, the official in charge would  
8 do a series of warnings, and to ensure that those on the fence  
9 line could hear the warnings, we were positioned there. So if  
10 we could hear the warnings, we could give an indication to  
11 that particular commander that we indeed heard the warnings.

12 Q And how many -- you said there was a series of warnings.  
13 How many warnings were given on November 15, 2010?

14 A We give -- Well, three warnings were given.

15 Q And were you able to hear the warnings?

16 A Yes, I was.

17 Q And do you have an independent recollection of the  
18 content of the warnings that were given?

19 A I can't do it verbatim but I can paraphrase.

20 Q Okay. Before you answer that question, who gave the  
21 warnings on November 15<sup>th</sup>, 2010?

22 A That would be Lieutenant Robert LaChance.

23 Q Okay. And could you please give a summary of the  
24 warnings as you recollect them.

25 MR. FELDMAN: I didn't get to the summary. I mean,

1 we all know what they are.

2 THE COURT: I agree. Could you be more precise and  
3 tell us what you heard where you were.

4 MR. FELDMAN: I have no objection. This is a man  
5 with 22 years experience, okay. Let's be real here. May I  
6 hand this up to the Court, please.

7 MS. GEORGE: Objection, Your Honor. I mean, I'm  
8 conducting direct.

9 THE COURT: Let her conduct her examination. I  
10 would prefer you do it another way other than --

11 MS. GEORGE: I would just play the tape. Is that  
12 okay, Your Honor?

13 THE COURT: That would be wonderful.

14 MS. GEORGE: Okay. Thank you.

15 THE COURT: You'll see the tape right in front of  
16 you, Officer.

17 THE WITNESS: Oh, thank you, sir.

18 (VIDEOTAPED PLAYED.)

19 Q (BY MS. GEORGE) Officer Stoudamire, I paused the tape.  
20 Are there two officers shown in this portion of Government's  
21 Exhibit No. 2 that I had paused?

22 A Yes, ma'am.

23 Q And could you please describe whether you are depicted in  
24 the portion of Government's Exhibit No. 2?

25 A Yes, I am.

1 Q And could you please describe to the Court where you are  
2 shown in this portion of Government's Exhibit No. 2?

3 A In this portion, that would be me in the lower right-hand  
4 corner.

5 MS. GEORGE: And Your Honor, at this time I would  
6 just like the record to reflect that the Government played  
7 Government's Exhibit No. 2, and shortly after it began, it's  
8 showing a portion of the beginning with seven of the  
9 demonstrators with their backs to Lieutenant LaChance, and  
10 Officer Stoudamire is shown in the lower right-hand corner.

11 THE COURT: Thank you.

12 (VIDEOTAPE PLAYED.)

13 THE COURT: Keep going.

14 (VIDEOTAPE PLAYED.)

15 Q (BY MS. GEORGE) Officer Stoudamire, I just paused Exhibit  
16 No. 2 after Lieutenant LaChance gave the first warning. The  
17 second warning was one of the warnings given in a series of  
18 warnings you were referencing earlier?

19 A Yes, ma'am.

20 Q And prior to the Government pausing the tape, did you see  
21 the yellow police line tape that you referenced in the video?

22 A Yes, ma'am, I did.

23 Q And was one of the light posts that you referenced also  
24 shown in the video with the yellow tape attached to it?

25 A Yes, ma'am.

1 (VIDEOTAPE PLAYED.)

2 Q (BY MS. GEORGE) I'm going to pause Government's Exhibit  
3 No. 2, and for the record, I have paused Government's Exhibit  
4 No. 2 after Lieutenant LaChance has given the first warning, and  
5 depicted in this frame there are only four demonstrators if  
6 you're facing the White House. It's the first four going from  
7 left to right connected to the White House fence, and there's an  
8 officer depicted in this frame. Do you know who that officer  
9 is, Officer Stoudamire?

10 A Yes, ma'am. That officer would be me.

11 Q Okay. And could you please explain to the Court or  
12 describe to the Court the distance that you are a short way  
13 away from the, I believe that's the first individual facing  
14 the White House fence?

15 A I would say that distance is about 5 feet.

16 Q And is that where you -- Let me just ask this. Did you  
17 remain there during the entire series of warnings?

18 A Best of my knowledge, that would be yes.

19 Q And could you hear the three warnings from that  
20 positioning?

21 A Yes, ma'am.

22 Q While you were posted at that location, did any of the 13  
23 demonstrators try to remove themselves from the fence?

24 A At that time, no, ma'am.

25 Q Did any of the demonstrators indicate to you that they

1 wanted to leave the perimeter area?

2 A No, ma'am.

3 Q Did any of them indicate asking to disconnect them from  
4 the fence?

5 A No, ma'am.

6 Q And at some point in time, after the three warnings were  
7 given, did you participate in the arrests of any of the  
8 individuals that were standing on the ledge connected to the  
9 White House fence?

10 A Yes, ma'am.

11 Q Do you see any of those individuals in court today?

12 A Yes, ma'am.

13 Q Could you please describe any of the individuals that you  
14 participated in in their arrest?

15 A Yes. Just behind you there in the Defendant section, the  
16 individual in the military uniform.

17 MR. FELDMAN: Indicating my client the Defendant,  
18 Your Honor.

19 THE COURT: Thank you.

20 Q (BY MS. GEORGE) And did you have a chance to watch the  
21 entire video that's memorialized in Government's Exhibit No. 2?

22 A Yes, ma'am.

23 Q And did you also -- did you affix your initials and a  
24 date to that exhibit?

25 A Yes, ma'am, I did.



1 Q And could you please tell the Court whether the events  
2 that would be described as the arrest of Mr. Choi are  
3 memorialized on the video?

4 A Yes.

5 MR. FELDMAN: Judge, it's in evidence.

6 THE COURT: Indeed it is. Thank you.

7 (VIDEOTAPED PLAYED.)

8 MS. GEORGE: Your Honor, with the Court's  
9 permission, at this time I'm going to fast-forward to the  
10 portion of the arrest of Mr. Choi.

11 THE COURT: That's fine. All right.

12 MS. GEORGE: Fast-forward.

13 Q (BY MS. GEORGE) While I am fast-forwarding, Officer  
14 Stoudamire, you indicated you participated in arrests of some of  
15 the individuals. How did you know that they were to be  
16 arrested?

17 A That came from the instruction of Lieutenant LaChance.

18 Q And what instruction did you receive from Lieutenant  
19 LaChance on November 15, 2010 to cause you to arrest  
20 individuals that you did in fact arrest?

21 A After the third warning, to the best of my knowledge, he  
22 either gave me -- gave us a head nod to continue or he  
23 actually verbally instructed us to start the arrest process.

24 Q And once you got that indication, what did you do?

25 A I started the arrest process.

1 Q And in starting that arrest processing, did Lieutenant  
2 LaChance ever tell you to consider the sexuality --

3 MR. FELDMAN: Objection.

4 Q -- of these individuals?

5 THE COURT: She's speaking to your selective  
6 prosecution. I think that you're -- I'm sorry. I interrupted  
7 you.

8 Q (BY MS. GEORGE) Did Lieutenant LaChance ever tell you to  
9 consider the sexuality of any of these 13 individuals on the  
10 White House fence in arresting them?

11 A No, he did not.

12 Q And did you know the sexuality of Mr. Daniel Choi?

13 A No, I did not.

14 Q And when I say "sexuality," I mean sexual orientation.  
15 Were you aware of his sexual orientation?

16 A No, I was not.

17 Q Did Lieutenant LaChance tell you to consider his sexual  
18 orientation in effectuating his arrest?

19 A No.

20 Q And in the, you said, couple of thousand arrests that you  
21 participated in the White House sidewalk, did you ever  
22 consider the sexual orientation of those individuals that you  
23 arrested in those occasions?

24 A No, I did not.

25 Q Now, when you were standing, I think you said

1 approximately 5 feet from the demonstrators on the White House  
2 fence, could you see the handcuffs?

3 A I believe only from the first person.

4 Q Is that the person?

5 A Closest to me, the one in the white that was closest to  
6 me.

7 (VIDEOTAPE PLAYED.)

8 Q (BY MS. GEORGE) Now, Officer Stoudamire, I paused  
9 Government's Exhibit No. 2 in a frame where there is a --  
10 appears to be an African/American individual with a black beret  
11 with some officers surrounding him. Do you recognize any of  
12 those officers?

13 A Yes, I do.

14 Q And are you one of those officers?

15 A Yes, I am.

16 Q And what are you doing in reference to that person?

17 A I'm in the process of assisting placing the handcuffs,  
18 what we refer to as flexicuffs on the individual in order to  
19 effect the arrest.

20 (VIDEOTAPED PLAYED.)

21 Q (BY MS. GEORGE) Now, Officer Stoudamire, after you  
22 arrested the individual, the African/American individual with  
23 the black beret, did any of the other remaining individuals on  
24 the White House ledge try to leave?

25 A No, they did not.

1 Q Did any of the individuals remaining on the White House  
2 ledge indicate to you verbally or otherwise that they wanted  
3 to leave?

4 A No.

5 MS. GEORGE: And Your Honor, I would like the record  
6 to reflect that the frame that's on Government's Exhibit 2  
7 that's showing now before Officer Stoudamire depicts an  
8 individual which appears to have a priest collar and then  
9 Defendant Dan Choi standing right next to him, and there are  
10 seven of the 13 individuals still remaining on the White House  
11 fence.

12 THE COURT: Sure. Thank you.

13 (VIDEOTAPED PLAYED.)

14 Q (BY MS. GEORGE) Officer Stoudamire, I am pausing  
15 Government's Exhibit No. 2. There appears to be a Park police  
16 officer in a S.W.A.T. black uniform that's baldheaded. Do you  
17 know who that is?

18 A Yes, I do.

19 Q Who is that?

20 A This is my supervisor, Sergeant Mark Adamichik. Do you  
21 need a spelling on that?

22 Q Could you please spell it, if you know how.

23 A It will be A-d-a-m-i-c-h-i-k.

24 (VIDEOTAPE PLAYED.)

25 MS. GEORGE: Your Honor, with the Court's

1 permission, could I fast-forward to the spot?

2 THE COURT: Please.

3 (VIDEOTAPE PLAYED.)

4 Q (BY MS. GEORGE) Officer Stoudamire, the Government's  
5 Exhibit No. 2 is paused at a point where there appears to be an  
6 individual with some bolt cutters. Do you know who that person  
7 is?

8 A Yes, I do.

9 Q And does that person work with you?

10 A Yes, he does.

11 Q Who is that person?

12 A That is Officer Robert Zarger, Jr.

13 Q And could you please tell the Court right now what you  
14 observed Zarger doing on November 15, 2010, as you  
15 independently recollect?

16 A He was in the process of cutting loose a set of handcuffs  
17 in order to free Mr. Choi from the fence line.

18 Q And do you recall how Mr. Choi's hands were connected to  
19 the fence -- meaning -- Well, let me just ask it this way.  
20 Were one or two hands handcuffed to the White House?

21 A Best of my knowledge, it was one hand.

22 MS. GEORGE: I want to continue Government's Exhibit  
23 2 at this point in time, Your Honor.

24 (VIDEOTAPE PLAYED.)

25 Q (BY MS. GEORGE) At this point in time, Officer

1 Stoudamire, the video is showing you and another officer pulling  
2 Mr. Choi from the fence. Could you please tell the Court why  
3 that was necessary.

4 A The person is removing Lieutenant Choi from the wall area  
5 simply in order to effect the arrest. We needed more room.

6 Q And was he cooperating with being disconnected from the  
7 fence?

8 A No, and that was the purpose for pulling him out to get  
9 more room because he had entirely stiffened up and it required  
10 additional officers in order to get his arms behind his back  
11 in order to place the flexicuffs on.

12 Q And were you saying anything to him at this point in time  
13 when you were effectuating the arrest?

14 A Yes. To the best of my knowledge, he was in -- he was  
15 instructed to roll over and he was also instructed to place  
16 his hands behind his back.

17 Q Okay. When he was told to roll over, did he roll over?

18 A No, he did not.

19 Q And when he was told to place his hands behind his back,  
20 did he place his hands behind his back?

21 A No, he did not.

22 Q So what if anything did you do to safely effectuate his  
23 arrest?

24 MR. FELDMAN: Objection.

25 THE COURT: Leave out the word "safely."

1                   What did you do when he did that?

2                   THE WITNESS:  What occurred was we required more  
3 officers.  So more officers allowed us to gain greater control  
4 of him, and utilizing greater strength we were able to get him  
5 rolled over and able to get his hands behind his back.

6           Q       (BY MS. GEORGE)  And did you do anything to harm or injure  
7 him during this process?

8           A       No, I did not.

9           Q       And do you know, did you see at this frame in  
10 Government's Exhibit No. 2, there are I think approximately  
11 four officers -- yes, four officers assisting you with the  
12 arrest of Mr. Choi; is that correct?

13          A       That would be correct.

14          Q       And could you please describe for the Court who these  
15 officers are.

16          A       From this, the best of my knowledge, the person on the  
17 far left would be Detective Sergeant Hodge.

18          Q       And can you determine who the other officers are with  
19 this frame on Government's Exhibit No. 2?

20          A       The officer in the largest screen closest to us would be  
21 Lieutenant Fennelly.

22          Q       Who is standing in front of Lieutenant Fennelly?

23          A       That I can't tell at this point, the other two.

24                   MS. GEORGE:  And at this frame in Government's  
25 Exhibit No. 2, Your Honor, Mr. Choi appears to be partially on

1 his right side.

2 Q (BY MS. GEORGE) And Officer Stoudamire, are you and the  
3 other officers in the process of doing what at this particular  
4 point in time?

5 A We were in the process of trying to roll him over on his  
6 stomach in order for us to place his hands behind his back for  
7 the flexicuffs.

8 (VIDEOTAPE PLAYED.)

9 Q (BY MS. GEORGE) At this frame in Government's Exhibit  
10 No. 2, you appear to have but one hand on the wrist of Mr. Choi  
11 and one around the -- some of his left fingers; is that correct?

12 A That is correct, yes.

13 Q What is going on at this point in time?

14 A We were still in the process of trying to get him to  
15 completely roll over on his stomach and he was still  
16 resisting.

17 Q And your hold -- you're holding his wrist and part of his  
18 left hand. Could you please describe for the Court the  
19 condition of his arm.

20 A Right now what you would see is his arm would be locked  
21 and extended in place.

22 (VIDEOTAPED PLAYED.)

23 Q (BY MS. GEORGE) At this point, Officer Stoudamire, it  
24 appears that in Government's Exhibit No. 2 Mr. Choi is face  
25 front to the ground with his left cheek to the ground. Would



1 you agree with that characterization?

2 A Yes, I would.

3 Q And at this point in time, is Mr. Choi complaining of any  
4 injury or saying anything?

5 A No, he is not. No, he was not.

6 Q And at any point in time up until this point, did he ever  
7 complain of any injury?

8 A No, he did not.

9 Q Did he say anything up until this point in time?

10 A No, he did not.

11 (VIDEOTAPE PLAYED.)

12 MS. GEORGE: Court's indulgence.

13 (PAUSE.)

14 MS. GEORGE: I'm showing Defense counsel what's been  
15 marked as Government's Exhibit No. 12.

16 MR. FELDMAN: You give me copies of this?

17 MS. GEORGE: Mr. Feldman asked the Government if  
18 they could have copies of them. I forwarded a DVD to  
19 Mr. Feldman with all the photographs in it.

20 MR. FELDMAN: I have the DVD, Your Honor, but I  
21 don't have those color shots, and they're going in evidence,  
22 so I don't have the evidence.

23 THE COURT: Let me see. What's on the DVD?

24 MS. GEORGE: The DVD is pictures of all the  
25 photographs that I have marked.

1 THE COURT: That's one of them?

2 MS. GEORGE: One of them is included in that DVD.

3 THE COURT: Objection overruled. You may admit it.

4 (GOVERNMENT EXHIBIT 12 ADMITTED.)

5 MS. GEORGE: May I approach the witness, Your Honor.

6 Q (BY MS. GEORGE) Officer Stoudamire, I show you what's

7 been marked and admitted by the Court as Government Exhibit

8 No. 12. Are you depicted in Government's Exhibit No. 12?

9 A I'm sorry?

10 Q Are you depicted, are you shown in Government's Exhibit

11 No. 12?

12 A Yes, I am.

13 Q And could you please explain to the Court what

14 Government's Exhibit No. 12 shows and at what point does that

15 show -- at what point in the arrest process does that show?

16 A At the conclusion of my part of the arrest, we -- we take

17 the individual over to our arrest wagon. At this point we

18 have criminal investigation people who do the search, take

19 down individuals' information. We do a complete search to

20 ensure that they're not carrying anything hazardous or

21 dangerous. Once that search is complete, they are then placed

22 inside the wagon for transport to our holding facility.

23 Q And did you participate in the search of Mr. Choi?

24 A Actually, no, I did not.

25 Q Did you observe the search?

1 A Yes, I did. I observed the search.

2 Q Okay. And did you observe the officer that searched  
3 Mr. Choi?

4 A Yes, I did.

5 Q And were any handcuff keys or other items recovered from  
6 Mr. Choi?

7 A To the best of my knowledge, no.

8 Q And you referenced the wagon. Is the wagon shown in  
9 Government's Exhibit No. 12?

10 A Yes, it is. It has the number "W1" listed on the back.

11 Q And what color is the wagon?

12 A The wagon is white with blue stripe. We refer to it as a  
13 wagon, but it's actually a van.

14 Q And at this point in time in the photograph depicted in  
15 Government's Exhibit No. 12, Mr. Choi appears to be standing;  
16 is that correct?

17 A That is correct, yes.

18 Q And are you assisting him with standing at this point in  
19 time?

20 A No, I am not.

21 Q Is -- are any of the other officers assisting him with  
22 standing at this point in time?

23 A No, they were not.

24 Q Officer Stoudamire, I have to backtrack just a little  
25 bit. So can we go back to when you arrived to the White House

1 sidewalk. You said that was approximately at 1:30; is that  
2 correct?

3 A I believe so, yes.

4 Q And until the point in time that's shown in Government's  
5 Exhibit No. -- Let's just say it this way. In Government's  
6 Exhibit No. 12, do you recall approximately what time it was  
7 when you were there with Mr. Choi at the arrest wagon?

8 A I would say probably somewhere around 2:30.

9 Q Okay. And during that period of time, do you recall  
10 whether you observed any individuals with amplification  
11 devices?

12 A Yes.

13 Q And could you please describe what type of device you saw  
14 an individual or individuals with?

15 A I saw an individual white male adult in a military  
16 uniform with a bullhorn outside of our -- outside of the zone  
17 that we created in the area of Lafayette Park.

18 Q Okay. I'm going to show you what's been marked or  
19 admitted as Government's Exhibit No. 35. Is Government's  
20 Exhibit No. 35 showing the individual that you just  
21 referenced?

22 A Yes, it does.

23 Q And in Government's Exhibit No. 35, is the individual you  
24 just spoke of in Lafayette Park in the photograph, in  
25 Government's Exhibit No. 35?

1 A Actually, no, this individual is not.

2 Q Okay. But is that the individual you saw in Lafayette  
3 Park?

4 A Yes.

5 Q And could you please explain to the Court where Lafayette  
6 Park is in relationship to the area that is shown in  
7 Government's Exhibit No. 35?

8 MR. FELDMAN: I think the Court knows.

9 THE COURT: I can take judicial notice of where he  
10 is because I can see in the distance the buildings that are  
11 familiar. One is the old Riggs National Bank which used to be  
12 on that corner.

13 MS. GEORGE: Just so it's clear, is the Court taking  
14 judicial notice that Lafayette Park would be behind the person  
15 in Government's Exhibit No. 35?

16 THE COURT: Yes, no question. I know exactly where  
17 he is. Judicial notice of his location is taken.

18 MS. GEORGE: Thank you.

19 No further questions at this time.

20 MR. FELDMAN: Very briefly. Is this the last  
21 witness, Judge?

22 THE COURT: I have no idea.

23 MR. FELDMAN: You want to ask or not?

24 THE COURT: Will you rest after this officer speaks?

25 MS. GEORGE: No, Your Honor.

1 THE COURT: Go ahead.

2 MR. FELDMAN: Okay. Thank you, Judge.

3 CROSS-EXAMINATION

4 BY MR. FELDMAN:

5 Q Good afternoon, Officer Stoudamire?

6 A Yes, sir, good afternoon.

7 Q How are you?

8 A Fine. How are you?

9 Q Pretty good. Little tired. Thanks for asking.

10 Did you see any time, from the time my client was on  
11 the ledge until he was arrested, that he posed a threat to  
12 public safety?

13 A From the time I was there, I did not see that, no.

14 Q Did you see that he posed a threat to emergency  
15 operations that involved a threat to public safety or park  
16 resources?

17 A Could you repeat that question, please.

18 Q Yes, sir. Did you see at any time that day, at all that  
19 day, that my client posed a threat to emergency operations  
20 that involved a threat to public safety or park resources?

21 A Well, sir, I take it if you're asking my opinion, I would  
22 have to say yes, due to the fact that he had actually chained  
23 himself to the fence line.

24 Q That's uncontroverted. He definitely handcuffed himself  
25 to the fence, right?

1 A Yes, sir.

2 Q Okay. How did him -- he chaining himself or handcuffing  
3 himself to the public fence create or pose a threat to  
4 emergency operations that involved the threat to public safety  
5 or park resources?

6 MS. GEORGE: Your Honor, that's a compound question.

7 THE COURT: That's all right. You understand that,  
8 Officer? Can you handle it?

9 THE WITNESS: I think I can handle it. Just repeat  
10 that again.

11 MR. FELDMAN: Can we have it read back, please.

12 THE COURT: Sure.

13 COURT REPORTER: (Reading) How did him -- he  
14 chaining himself or handcuffing himself to the public fence  
15 create or pose a threat to emergency operations that involved  
16 the threat to public safety or park resources?

17 MS. GEORGE: Objection, it's a compound question.

18 THE COURT: I'm sorry. Overruled. Can you answer  
19 the question?

20 THE WITNESS: Yes. Just go over the first part.  
21 Repeat the first part for me, please.

22 COURT REPORTER: (Reading) How did him -- he  
23 chaining himself or handcuffing himself to the public fence  
24 create or pose a threat to emergency operations that involved  
25 the threat to public safety or park resources?

1           THE WITNESS: Well, I would say from chaining --  
2 from handcuffing himself to the fence, if an incident had  
3 taken place that required some kind of emergency response  
4 between the Secret Service on the inside of the fence or us, I  
5 don't know if he would have ever been able to get himself  
6 loose.

7       Q       (BY MR. FELDMAN) But it didn't, did it?

8           MS. GEORGE: Objection, Your Honor, relevancy.

9           THE COURT: No, it didn't, meaning such an event did  
10 not occur that day; is that right?

11          MR. FELDMAN: Yes. Thank you, sir.

12          THE WITNESS: Right. Okay. I'm sorry, Your Honor,  
13 I guess I took that --

14          THE COURT: Don't say sorry. You are being very  
15 candid. I just wanted to make sure you understood the  
16 question.

17          THE WITNESS: I took that to mean you were asking me  
18 my perception of what a threat would consist of.

19       Q       (BY MR. FELDMAN) Well, you've been doing this 22 years.

20       A       Yes.

21       Q       You're the most seasoned guy here, right?

22       A       Well, on the stand right now.

23       Q       Well, the most seasoned guy, as far as you know, that's  
24 testifying in this case.

25          MS. GEORGE: Objection, Your Honor, lacks foundation



1 that he knows who has testified.

2 THE COURT: Of the officers assigned to this unit at  
3 the White House, are you one of the more senior?

4 THE WITNESS: I am one of the more senior, but I am  
5 not the senior.

6 THE COURT: All right.

7 Q (BY MR. FELDMAN) Sir, you very candidly -- let's talk  
8 real here, please. You very candidly said that the way that  
9 Choi posed a threat was by handcuffing himself to the public  
10 fence, correct? I mean, to the White House fence?

11 A The White House fence. I understand what you're saying.

12 Q Right. And then I asked how does handcuffing himself to  
13 the White House fence pose a threat to public safety, law  
14 enforcement actions and emergency operations that involved the  
15 threat to public safety or park resources? And you said by  
16 handcuffing himself to the fence, correct?

17 MS. GEORGE: Objection, Your Honor. The Government  
18 would ask that that question be bifurcated. There is four  
19 conditions. It's four separate questions.

20 THE COURT: Do you understand the question?

21 THE WITNESS: Well, not all of it, so I think we're  
22 just going to have to restate.

23 Q (BY MR. FELDMAN) Rephrase it. You very candidly said, to  
24 answer the question, by handcuffing himself to the fence, and  
25 then you said, if something would have happened that would have

1 made it necessary to do an emergency operation for some reason,  
2 then it would have created a public threat, correct?

3 A That it could have, yes.

4 Q That it could have, even better. And then you candidly  
5 conceded that that thing did not occur, correct? That the  
6 thing that caused the necessity to conduct an emergency  
7 operation -- see, it's a hypothetical threat; is that fair?

8 A Well, I perceived your question as a hypothetical  
9 question.

10 Q Well, something didn't occur. I mean, don't you agree  
11 that we're sort of chasing -- we're going round and round?  
12 Don't you agree that this very nice discussion, this very nice  
13 interrogation, respectful interrogation, your very respectful  
14 answers are going around and around; don't you agree with  
15 that?

16 MS. GEORGE: Objection, vagueness and relevancy  
17 about the characterization of the questioning.

18 THE COURT: Sustained.

19 Q (BY MR. FELDMAN) All right. Let me rephrase, and let's  
20 do it word by word, okay.

21 You would agree is that there were no fire fighting  
22 operations involved here, correct?

23 A Correct.

24 Q You would agree there were no search and rescue  
25 operations here, correct?

1 A Yes, sir, correct.

2 Q You would agree there were no wildlife management  
3 operations involving animals that posed a threat to public  
4 safety, law enforcement actions and emergency operations that  
5 involved the threat to public safety or park resources or  
6 other activities where the control of public movement and  
7 activities is necessary to maintain order and public safety?

8 MS. GEORGE: Objection, compound question.

9 Q (BY MR. FELDMAN) Other than him handcuffing himself to  
10 the fence, that's the only thing that he did that posed any kind  
11 of threat. That's a nice simple question, right?

12 A Again, you came by with at least four different things or  
13 so.

14 THE COURT: Let me see if I can help you, Officer.

15 THE WITNESS: Yes.

16 THE COURT: We all agreed he chained himself to the  
17 fence.

18 THE WITNESS: Yes, sir.

19 THE COURT: What counsel is doing is he was reading  
20 to you from something you may not have seen. It is the  
21 regulation that pertains here, which you may or may not be  
22 familiar, and his point is he would like you to explain to him  
23 why you, on basis of a very experienced officer, believe that  
24 his handcuffing to the fence raised a threat to the public  
25 safety or to park resources.

1 THE WITNESS: All right. Because I was under the  
2 impression -- but again, it doesn't change my answer.

3 Q (BY MR. FELDMAN) You answered it.

4 A Yes, my perception.

5 Q Answer it again. You answered already.

6 A My perception is the reason why something like that would  
7 have been a threat is because should something have happened,  
8 I don't know if Mr. Choi -- Lieutenant Choi would have been  
9 able to ever get himself free.

10 Q Right.

11 A And if we had to respond to some kind of incident, we --  
12 he would be an additional issue that we would have to address.

13 Q But you do agree that certain something never happened.

14 A That is correct.

15 Q And you do agree that you never had to address any  
16 additional situation, correct?

17 A That is correct, yes, sir.

18 Q Okay. Thanks. I'll move on.

19 Now, what's the name of the gentleman -- I don't  
20 want to play the tape again, okay. I'm sure you can help me  
21 out here. At the beginning, one of the first people that were  
22 arrested on the tape, you were involved with the arrest and  
23 there was a gentleman, I believe he was a white gentleman with  
24 a black cardigan like sweater, a woolen sweater on, you know  
25 him, or do I have to play the tape again?

1 A Oh, I hope --

2 THE COURT: Don't we have a picture that we can show  
3 the officer so we don't have to -- I'm looking right at one  
4 right here.

5 MS. GEORGE: I don't know to whom Mr. Feldman is  
6 referring.

7 THE COURT: He's referring to one of the  
8 demonstrators.

9 MR. FELDMAN: No, no, a police officer.

10 THE COURT: Oh, I'm sorry. Then I was mistaken.

11 MR. FELDMAN: May my assistant play the tape again?

12 MS. GEORGE: Your Honor, I would assist him but I  
13 have no idea who he's referring to.

14 THE COURT: Have your assistant do it.

15 MR. FELDMAN: Go to the place where Officer  
16 Stoudamire is making an arrest with the gentleman with the  
17 cardigan, the top of the cardigan.

18 You want to turn it a little lower, Iana. Can I  
19 turn that sound off, Judge, mercifully?

20 THE COURT: Sure.

21 MR. FELDMAN: Stop, stop.

22 Q (BY MR. FELDMAN) You can see Hodge. You see Hodge?

23 A Yes, he appears --

24 MS. GEORGE: Your Honor, can we pause the tape for  
25 the record and record what we're looking at?

1 MR. FELDMAN: We have to keep on looking to find the  
2 guy.

3 THE COURT: At this point --

4 MR. FELDMAN: There it is. Stop.

5 THE COURT: -- Defendant is on the ground, Officer  
6 Stoudamire is over him in what appears to be one handcuff in  
7 his right hand, right.

8 MR. FELDMAN: Yes, sir.

9 THE COURT: My question is who else is in the photo?

10 MR. FELDMAN: Well, we see Easter, the white guy  
11 with the black hat, right.

12 THE COURT: Right.

13 MR. FELDMAN: Let's go around counter-clockwise.

14 MS. GEORGE: Your Honor, I have an objection.

15 Mr. Feldman is commenting on -- the witness hasn't affirmed  
16 his comment.

17 MR. FELDMAN: He's nodding his head.

18 THE COURT: Okay. Stoudamire, Easter, the question  
19 is who is that other person who is bending over.

20 MR. FELDMAN: Correct.

21 THE COURT: Is directly across from you.

22 MS. GEORGE: To who is the Court pointing to?

23 THE COURT: I am pointing to the man who is --

24 MR. FELDMAN: May I approach, Ms. George\_

25 MS. GEORGE: I am talking to the Court, Mr. Feldman.

1 THE COURT: Who is bending down who is directly  
2 across from Officer Stoudamire. Officer Stoudamire's left  
3 hand is holding the handcuffs. The gentleman's hand is in the  
4 small of the Defendant's back.

5 MR. FELDMAN: Exactly.

6 MS. GEORGE: Thank you, Your Honor.

7 Q (BY MR. FELDMAN) What's that gentleman's name, please.

8 A Unfortunately, I know who he is, I just don't remember  
9 his name.

10 Q Fair enough. Is his name Laska?

11 MS. GEORGE: Objection. He stated he doesn't know  
12 his name.

13 MR. FELDMAN: I can refresh his recollection. He  
14 says he knows the guy.

15 THE COURT: Is it Laska?

16 THE WITNESS: It may be.

17 MR. FELDMAN: Okay. Judge, at this time since his  
18 knowledge is in the control of the Government and not me at  
19 all, and this gentleman right here, Officer Stoudamire, seems  
20 to be working with this gentleman and Ms. George is the  
21 Government attorney, I respectfully demand the name of that  
22 guy.

23 Q (BY MR. FELDMAN) Is it Robert Zarger, Jr.? Does that  
24 refresh your recollection, Officer Stoudamire?

25 A Oh, no, that would definitely not be Officer Zarger.

1 THE COURT: Who is it, Ms. George?

2 MS. GEORGE: Your Honor, first of all, for the  
3 record, the record must reflect that Mr. Feldman sent me  
4 several photographs, I think a couple of weeks ago, who the  
5 Government already identified to him who these officers were.

6 THE COURT: As a courtesy to me, would you be so  
7 kind as to say who this human being is.

8 MS. GEORGE: It's Officer Laska.

9 THE COURT: Thank you.

10 MR. FELDMAN: Thank you so much.

11 MS. GEORGE: Which he already knew.

12 MR. FELDMAN: I wouldn't have wasted your time,  
13 Judge.

14 THE COURT: Okay. Thank you very much.

15 MR. FELDMAN: I would not have wasted your time.

16 THE COURT: Now, we established the Officer.

17 MR. FELDMAN: Laska, L-a-s-k-a.

18 THE COURT: We are now moving on, well past the  
19 significance of that information.

20 Q (BY MR. FELDMAN) That human being in on my client's back,  
21 that's the cosmoics, right or wrong.

22 MR. FELDMAN: Play it over, Iana. Backward and  
23 forward so Mr. Stoudamire sees it.

24 MS. DIBONA: Sure, Mr. Feldman. Is that okay?

25 (VIDEOTAPE PLAYED.)



1 Q (BY MR. FELDMAN) Do you see that he unnecessarily had to  
2 put his knee in my client's body?

3 MS. GEORGE: Objection as to whether --

4 THE COURT: I don't think it was unnecessary, but I  
5 don't think it's for me --

6 MR. FELDMAN: You say that, I'll stop, Judge. If  
7 you say that, that's the rule -- I mean, the fact as you see  
8 it.

9 THE COURT: Please don't interrupt me. You see,  
10 Officer Stoudamire, that at one point that gentleman puts his  
11 night right under the butt of him, the --

12 MR. FELDMAN: Choi.

13 THE COURT: Choi, the Defendant.

14 THE WITNESS: Yes, sir. Yes, Your Honor.

15 MR. FELDMAN: And you say it's unnecessary, you're  
16 fine, Judge. I disagree respectfully. I'll move on.

17 THE COURT: The question to both of you, why is the  
18 effectuation of the Defendant's arrest significant?

19 MR. FELDMAN: It shows bias.

20 THE COURT: Why, Ms. George, did you elicit evidence  
21 as to that?

22 MS. GEORGE: Your Honor, it's significant because  
23 the nature on which Mr. Choi is being arrested and his  
24 resistance shows his intent to failure to obey the order. I  
25 mean, he's not cooperating.

1 THE COURT: I think that's a stretch.

2 MS. GEORGE: I mean, it's subject to connect --

3 THE COURT: I can't believe we spent as much time as  
4 we did on effectuation of the arrest that I don't really see  
5 any significance.

6 MR. FELDMAN: I agree, Your Honor.

7 MS. GEORGE: Your Honor, can I answer the Court's  
8 question fully. The Court has decided to take the motions  
9 under advisement, so the Government is asking questions.

10 THE COURT: Ms. George, for the last time, you were  
11 not obliged to anticipate any defense. For all you know, they  
12 may rest as soon as you close and there may be no defense. It  
13 is not the law that I have to rule in advance of the closing  
14 of your case whether they can present the defense. That's not  
15 the law.

16 MS. GEORGE: And I understand that, Your Honor.

17 THE COURT: He's got the right to present a defense  
18 or present no defense and refuse to take the stand if that's  
19 what he's wishing to do. Unless and until that moment comes,  
20 why are you reaching out of there? Don't you trust me? I  
21 represented to you that if he does raise a defense and you in  
22 fairness have not had a fair opportunity to speak to the  
23 factual issues presented, I will permit you to do so.

24 MS. GEORGE: Your Honor, it's also --

25 THE COURT: But you can't -- you can't, as a

1 condition of proving his guilt beyond a reasonable doubt,  
2 anticipate the defenses he may have and then say that I must  
3 give you a preliminary ruling upon the bases that if he does  
4 not grant and presents a defense, it would be insufficient. I  
5 can't do that. That's not fair. That's not what the  
6 constitution permits. He's got the constitutional right to  
7 present a defense if that's what he wants to do.

8           If that defense is insufficient as a matter of law,  
9 then I will have to reach whatever conclusion I must. But  
10 until we get to that, I don't understand it.

11           MS. GEORGE: Your Honor, may I respond at this point  
12 in time?

13           THE COURT: Sure.

14           MS. GEORGE: The Government's response to the  
15 Court's statement is that this evidence is relative to the  
16 Defendant's arrest on that day regarding the elements before  
17 the Court. In addition, the --

18           THE COURT: All of which speak not to his actions  
19 after he is -- after the arrest is made when he's lying on the  
20 ground but to whether his behavior on that day violated  
21 Section 2.32.

22           MS. GEORGE: That is correct, Your Honor. And  
23 specifically --

24           THE COURT: So whether his arrest was properly made  
25 or improperly made has nothing to do with that; we agree as to

1 that?

2 MS. GEORGE: No, Your Honor. The Government does  
3 not agree.

4 MR. FELDMAN: I agree.

5 MS. GEORGE: It's related to the elements of failure  
6 to obey a lawful order.

7 THE COURT: Proceed. Thank you.

8 MS. GEORGE: May I speak to the Defense comment that  
9 the Court made? The Government's argument to the Court is  
10 that all of the subjects of the motion in limine are not in  
11 fact defenses. So the Government is addressing a number of  
12 things; the selective prosecution, which is not a defense, and  
13 the Court has already considered that throughout the direct of  
14 all of the witnesses.

15 So the Government had the understanding that it  
16 should be asking questions about that particular subject.

17 THE COURT: You misunderstood my ruling and I'm  
18 sorry I was not clear, but I was trying to communicate to you  
19 then and I will communicate to you again, I don't believe it  
20 is the function of a motion in limine, unlike a civil case,  
21 for me to anticipate the potential defenses that may be raised  
22 and reached. Unless and until the Defendant presents a  
23 defense it's -- the question of sufficiency doesn't even  
24 arise. It's hypothetical.

25 MS. GEORGE: Your Honor, earlier the Court said that

1 I could ask questions in relation to the selective prosecution  
2 theory that the Defense is alleging, and these questions are  
3 related to that and that's on the basis in which I was asking  
4 the questions.

5 THE COURT: All right. Then if I said that, then I  
6 was mistaken. Having listened to the testimony all day, I now  
7 have the issue sharpened for me.

8 The first issue is whether or not there was a  
9 violation of the regulation that was involved. As I  
10 understand that, once you rest, the Defendant will make  
11 whatever arguments he can as to the sufficiency of your case.

12 Then the Defendant will decide whether to present  
13 the defense of these charges or otherwise try to defend  
14 himself. He may choose selective prosecution, he may deny his  
15 guilt, he may choose whatever defense he wishes to. I assure  
16 you if he does that and you believe there is insufficiency of  
17 your proof related to that defense, you will be permitted to  
18 do so.

19 MS. GEORGE: And the Government is confident in  
20 that, Your Honor. The Government also has, as we discussed  
21 earlier, two legal theories of the case. These questions are  
22 related to the primary theory as well as the secondary theory.

23 MR. FELDMAN: Objection. This colloquy is  
24 interrupting my flow, Judge. You already ruled.

25 THE COURT: Let's proceed. All right. I understand

1 your point, Ms. George, and we'll return to it later. Let's  
2 go.

3 Q (BY MR. FELDMAN) Thank you, Officer Stoudamire. Move on  
4 very briefly.

5 He was put under arrest for failure to obey and  
6 before Officer Laska had his knee in his butt and before you  
7 were gently carrying him. In other words, he was under arrest  
8 for failure to obey before that, whatever, correct?

9 A Please repeat that question one more time.

10 Q My client was under arrest before Laska had his knee in  
11 my client -- beneath my client's butt?

12 A Yes, that is correct.

13 Q Then we're talking about mood, and I understand the  
14 judge's ruling. Let me move on.

15 So, out of all the couple of thousand cases that  
16 you've been involved in for mass protests in front of the  
17 White House, how many of them about have been prosecuted in  
18 federal court?

19 A That, I have no idea.

20 Q More than five or less than five?

21 MS. GEORGE: Objection, Your Honor, he --

22 THE COURT: He says he has no idea. I'm afraid  
23 having no idea is no idea.

24 Q (BY MR. FELDMAN) Okay. Well, how about this. How many  
25 times have you testified in superior court involving, more or

1 less, involving cases involving demonstrations?

2 MS. GEORGE: Objection, Your Honor, relevancy,  
3 vagueness, under what context?

4 MR. FELDMAN: The question goes of how much goes  
5 there and how much stays here, Judge.

6 THE COURT: In those situations where you have  
7 effectuated arrests at the White House, do you recall at the  
8 top of your head or otherwise, how many of those times you  
9 found yourself having cases they say papered in superior court  
10 as opposed to this court?

11 THE WITNESS: I would have to say this is the first  
12 time.

13 Q (BY MR. FELDMAN) Thank you.

14 A For me.

15 Q 2,000 in 22 years, yes, sir?

16 A Yes, sir.

17 Q Thank you.

18 MR. FELDMAN: Anything else?

19 THE COURT: Ms. George?

20 MR. FELDMAN: I am asking my client "anything else."

21 THE COURT: Oh, I'm sorry. Excuse me. I didn't  
22 hear you say that.

23 MR. FELDMAN: We mumble a lot, and that's it, Judge.  
24 Thank you very much.

25 Q (BY MR. FELDMAN) Thank you for your honesty, sir.

1           Okay. Let's talk about the audibility issues.

2           MS. GEORGE: I'm sorry, let's talk about what?

3           Q       (BY MR. FELDMAN) Audibility issues. This is a very  
4 intelligent seasoned man here. Okay. You're on the left.  
5 Facing the White House, you're on the left, correct? Facing the  
6 White House, you're on the left?

7           A       Yes, sir, I am.

8           Q       And LaChance is -- is back towards, you know, away from  
9 the White House, LaChance?

10          A       Lieutenant LaChance, yes, sir.

11          Q       He says it's LaChance. He liked it my way. He did.

12                 So Lieutenant LaChance is way back about 30 yards,  
13 more or less, behind you?

14          A       No, sir, I would not say 30 yards.

15          Q       What would you say?

16          A       I would say approximately 40 feet.

17          Q       Would you be surprised to know that he testified under  
18 oath that he was approximately 30 yards?

19                 MS. GEORGE: Objection, Your Honor.

20          Q       (BY MR. FELDMAN) Or 120 feet?

21                 MS. GEORGE: Objection, Your Honor, relevancy as to  
22 his testimony.

23                 THE COURT: He can't comment on someone else's  
24 testimony. Sustained.

25                 MR. FELDMAN: The Court is very -- note, very



1 astute.

2 Q (BY MR. FELDMAN) Okay. Now, when you said you heard  
3 LaChance giving the warnings, would it be fair to say that you  
4 were not chanting? You were not chanting?

5 A That is correct, I was not.

6 Q You were not screaming?

7 A That is correct, I was not.

8 Q And Choi was chanting at that point when LaChance was  
9 giving the warnings, correct?

10 MS. GEORGE: Objection. He hasn't laid the  
11 foundation.

12 THE COURT: Well, in the videotape I saw Choi  
13 chanting. Did you hear him and see him doing that?

14 THE WITNESS: To the best of my knowledge, I do not  
15 know if he chanted every single time during the warnings.

16 Q (BY MR. FELDMAN) That's fair. But there was -- it would  
17 be fair to say that he was chanting or screaming or yelling --  
18 chanting or yelling, talking loud, and the other co-defendants  
19 were also chanting or talking loud during the majority of this  
20 whole event?

21 MS. GEORGE: Objection, compound question, Choi and  
22 other individuals.

23 THE COURT: I think it's overruled. I think the  
24 officer can understand. Do you understand what he's saying?

25 THE WITNESS: I understand that, Your Honor.

1 THE COURT: Thank you.

2 Q (BY MR. FELDMAN) You're quiet. You remain silent during  
3 this whole thing?

4 A Based on the video, I did see that Lieutenant Choi and  
5 others had been chanting, and then yes, I did remain quiet.

6 Q Okay. And it would be fair to say that because you  
7 remained quiet, it would be reasonable and fair to say that it  
8 would be -- that LaChance's warnings would be more audible to  
9 you than it would be to Choi because him and his buddies are  
10 chanting and singing -- and yelling?

11 MS. GEORGE: Objection to the latter part of the  
12 question. He can't testify to what Mr. Choi could or couldn't  
13 hear.

14 THE COURT: Well, I don't know. Let me see if I can  
15 understand what counsel is driving at. You're about 5 feet  
16 from these people.

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: And you, of course, are silent.

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: They are not, right?

21 THE WITNESS: Correct, Your Honor.

22 THE COURT: And what counsel was trying to have you  
23 explain to him is whether from your perspective it was likely  
24 they heard what you heard.

25 THE WITNESS: Well, my perspective would be yes,

1 they did simply because of my proximity to them. So although  
2 they were chanting, I was -- I definitely heard them, I heard  
3 the audible noise of their chanting, but I was still able to  
4 hear the warnings from Lieutenant LaChance.

5 Q (BY MR. FELDMAN) But it would be fair to say, since you  
6 were maintaining silence, you would have heard LaChance better  
7 than people who were making lots of noise?

8 MS. GEORGE: Objection, Your Honor. The question  
9 presumes --

10 THE COURT: I think that calls for him -- I think I  
11 got your point, Counsel. The objection is sustained.

12 MR. FELDMAN: Thank you, Judge.

13 Q (BY MR. FELDMAN) Now, you've heard these warnings  
14 hundreds or thousands of times, correct?

15 A Yes, sir.

16 Q And would it be fair to say, since you heard them  
17 hundreds of thousands of times, it's normal phenomena when you  
18 hear the same stuff over and over again, like for instance  
19 let's talk about lyrics to a song, went you hear a song over  
20 and over again, the lyrics come clearer, you perceive them  
21 clearer; that's correct, isn't it?

22 MS. GEORGE: Objection, Your Honor.

23 THE COURT: Well, in your experience, is it true  
24 that the more you hear something, the more likely you are to  
25 remember it?

1 THE WITNESS: I would have to say yes.

2 Q (BY MR. FELDMAN) And not only remember it, sir, to  
3 understand the words. And let me give you an example. If you  
4 hear a song, the first time you hear it you may not understand  
5 the words, but if you hear it repeatedly thousands of times over  
6 20 years, you hear words that you were not able to understand  
7 when you first heard the song?

8 A I would say that is a possibility, yes.

9 Q And would you also say it's a reasonable possibility, the  
10 same way with the song, that since you've been doing this for  
11 22 years and hearing this over and over again, and Choi has  
12 only heard it maybe one, two, three, four, five times,  
13 certainly less than the thousand, it would be harder for him  
14 to understand the words than for you to understand the words  
15 because you heard it thousands of times; that's fair to say,  
16 isn't it?

17 MS. GEORGE: Objection, Your Honor.

18 THE COURT: I'll going sustain the objection.  
19 Again, I think I got the point.

20 MR. FELDMAN: I'll move on. Hang on. Thank you  
21 very much, Officer, for your candid honest testimony.

22 THE COURT: Anything else?

23 MS. GEORGE: Yes, Your Honor.

24 THE WITNESS: You're welcome, sir.

25 REDIRECT EXAMINATION

1 BY MS. GEORGE:

2 Q Officer Stoudamire, the Court asked you a question in  
3 response to Mr. Feldman's question about arrests that were  
4 quote/unquote papered in superior court. You recall that  
5 reference?

6 A Yes, I do.

7 Q Do you understand what it means to -- what the term  
8 "papered in superior court" means?

9 A Yes, what we do is we present evidence to an Assistant  
10 U.S. attorney. They make a decision as to whether or not it  
11 goes forward for trial. If it does go forward, if it goes  
12 further beyond our presentation, we refer to that as papered.

13 Q And the Court and Mr. Feldman asked you to draw a  
14 conclusion in response to their compound question about the  
15 arrests in your couple of thousand arrests, how many were  
16 papered in superior court as opposed to U.S. district court;  
17 do you recall that question?

18 A Yes, I do.

19 Q And your response was that you said you believed that  
20 this case that we're talking about here today in court was the  
21 first one that was brought in federal court; is that correct?

22 MR. FELDMAN: That he was involved in.

23 THE COURT: Yeah. Do you understand?

24 MS. GEORGE: He didn't say -- that's why -- he  
25 didn't say that he was involved in papering of anything.

1 That's what I'm trying to clarify.

2 THE COURT: Could the reporter please find that  
3 portion of the testimony where he spoke to that question. It  
4 follows a question by me in which the words "superior court"  
5 appear.

6 COURT REPORTER: (Reading) In those situations  
7 where you have effectuated arrests at the White House, do you  
8 recall at the top of your head or otherwise, how many of those  
9 times you found yourself having cases that they say papered in  
10 superior court as opposed to this court?

11 That was a question by the Court.

12 THE COURT: That what was my question.

13 COURT REPORTER: Yes. And the answer was (reading)  
14 I would have to say this is the first time.

15 Q (BY MS. GEORGE) In those cases that the Court was  
16 referencing, were you involved in every instance that was  
17 presented to the U.S. Attorney in superior court in the papering  
18 process?

19 A That would be no.

20 Q So, do you know whether the case was even presented for  
21 papering -- any of those cases were presented for papering at  
22 all?

23 A No.

24 MS. GEORGE: No further questions, Your Honor. I do  
25 have -- not with regard to that issue. I do have some

1 additional questions.

2 THE COURT: Go ahead.

3 Q (BY MS. GEORGE) Mr. Feldman asked you several questions  
4 about whether you could or couldn't hear the warnings when  
5 Mr. Choi and the other individuals were chanting. Do you recall  
6 those questions?

7 A Yes, I do.

8 Q And I think you testified that you could hear the  
9 warnings even though they were chanting; is that correct?

10 A That is correct, yes.

11 Q Now, in addition to Mr. Choi and the other individuals  
12 chanting, there was other noise coming from the crowd that was  
13 on the outside of the perimeter; isn't that correct?

14 A That is correct, yes.

15 Q Could you still hear the warnings that Lieutenant  
16 LaChance gave over the chanting of Mr. Choi, over the chanting  
17 of the individuals with Mr. Choi and over the external noise  
18 coming from the crowd on the outside of the perimeter?

19 A Yes, I could.

20 Q Mr. Feldman also asked you questions about whether  
21 Mr. Choi created a public safety issue at the White House  
22 sidewalk as a result of chaining himself to the fence. You  
23 recall those questions?

24 A Yes, I do.

25 Q Now, I'd like to ask you some questions about the -- in

1 your 22 years of participating in arrests at the White House  
2 sidewalk, when you and the other Park police officers go to  
3 monitor demonstrations at the White House sidewalk, are you  
4 concerned about public safety in monitoring those  
5 demonstrations?

6 MR. FELDMAN: Objection.

7 THE COURT: Overruled.

8 A Yes, we are.

9 Q (BY MS. GEORGE) And whose public safety are you concerned  
10 about in monitoring those demonstrations?

11 A Well, what we do is we start with, of course, the public.  
12 My apologies. We start with our concern about the safety of  
13 the public, the safety of the officers and the safety of the  
14 demonstrators.

15 Q Okay. And are you concerned about the public safety of  
16 any individuals that also may be inside of the White House?

17 A Yes, we are.

18 MR. FELDMAN: Objection, relevance. Nobody is --

19 THE COURT: That's not public safety. That's  
20 individual safety.

21 MR. FELDMAN: Nobody is saying they are going after  
22 the President of the United States, Judge.

23 THE COURT: Nobody is suggesting that, but the  
24 public safety in your view includes the safety of the people  
25 who live at the White House and work there as well.



1 THE WITNESS: Yes, sir, Your Honor, that is correct.

2 THE COURT: Thank you.

3 Q (BY MS. GEORGE) And does your view of public safety  
4 include tourists that are at the White House sidewalk during  
5 these demonstrations?

6 MR. FELDMAN: Beyond the scope of cross, Judge.

7 THE COURT: No, that's all right. I think it's  
8 within the scope of cross. You asked about public safety. Go  
9 ahead.

10 A That is correct, yes.

11 MS. GEORGE: No further questions at this point,  
12 Your Honor.

13 MR. FELDMAN: One thing. I won't even stand up, it  
14 will be so short.

15 RE-CROSS-EXAMINATION

16 BY MR. FELDMAN:

17 Q He didn't obstruct movement, did he? Choi didn't  
18 obstruct movement, did he? Movement?

19 A No, Lieutenant Choi did not.

20 MR. FELDMAN: Thank you.

21 THE COURT: You may step down, please. Thank you  
22 very much, sir.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: You're welcome. Call your next witness.

25 MS. GEORGE: The Government calls Officer Robert

1 Zarger to the stand.

2 THE COURT: Officer Zarger, please.

3 THE DEPUTY CLERK: Stand right here for me, sir.

4 (WITNESS SWORN BY THE DEPUTY CLERK.)

5 THE DEPUTY CLERK: Thank you. You may be seated and  
6 adjust the mic to you.

7 ROBERT F. ZARGER, JR.,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. GEORGE:

11 Q Sir, please state your name for the record, spelling your  
12 first name and your last name.

13 A Robert, R-o-b-e-r-t; Francis Zarger, Z-a-r-g-e-r, Jr.

14 Q Where do you work, sir?

15 A I work with the United States Park Police.

16 Q And are you a law enforcement officer with that agency?

17 A I am.

18 Q How long have you worked with the Park police?

19 A 26 years.

20 Q And could you please summarize your experience with the  
21 Park police explaining your ranks and give a general overview  
22 of duties that you have been responsible for in those 26  
23 years.

24 A I'm a private assigned to the S.W.A.T. unit. Initially  
25 came on as a patrol officer on the George Washington Memorial

1 Parkway in 1985. In 1989 I was -- tried out for and was  
2 selected for the S.W.A.T. team and have been working with the  
3 S.W.A.T. team in that capacity since 1989.

4 Q And as a member of the S.W.A.T. team, do your duties  
5 include responding to demonstrations conducted on the White  
6 House sidewalk?

7 A They do.

8 Q Could you please explain to the Court how the S.W.A.T.  
9 team is specifically involved in monitoring those  
10 demonstrations and making any arrests of individuals that are  
11 demonstrating on the White House sidewalk?

12 A We are responsible for monitoring the demonstrations that  
13 occur in Lafayette Park and the White House sidewalk and that  
14 area. When there is violations of the Code of Federal  
15 Regulations and lockups happening --

16 Q And what's that?

17 A And there is a need to be lockups, we assist with  
18 removing the subjects if they are chained or handcuffed to the  
19 fence or carry them to the wagon where they are transported to  
20 normally our Anacostia field office, and at that time we can  
21 sometimes also assist with the processing and paperwork,  
22 fingerprints at the substation.

23 Q Okay. Officer Zarger, you mentioned removing individuals  
24 from the fence if they are handcuffed to the White House  
25 fence. I want to direct your attention to November 15<sup>th</sup>,

1 2010. Did you respond as a member of the S.W.A.T. team of  
2 U.S. Park Police in reference to a demonstration on that day?

3 A I did.

4 Q And approximately what time did you arrive at the White  
5 House sidewalk?

6 A Approximately 2:00 o'clock.

7 Q And could you please tell the Court, if you remember,  
8 what if anything -- what if anything you observed when you  
9 arrived at that time.

10 A I observed a small number of approximately 13 individuals  
11 that were handcuffed to the White House fence standing on the  
12 masonry brick, and they were stationary within the restricted  
13 zone and handcuffed. One hand was handcuffed to a handcuff  
14 and the other side of the handcuff was handcuffed around the  
15 White House fence post.

16 Q You -- once you arrived to the White House sidewalk,  
17 could you tell the Court -- Well, let me just ask you this.  
18 Who was managing or supervising the monitoring of the White  
19 House demonstration from the Park police perspective at that  
20 point in time?

21 A Lieutenant Robert LaChance who's the commander of the  
22 S.W.A.T. unit.

23 Q And did you receive any instructions from him or any  
24 other supervising official in reference to what your role  
25 would be in relationship to the individuals that were

1 handcuffed to the White House fence?

2 A Yes, I was assigned to use bolt cutters to remove the  
3 handcuffs from the individuals and the fence.

4 Q Now, as a U.S. Park Police officer, do you carry  
5 handcuffs as part of your uniform and on your uniform belt?

6 A Yes.

7 Q And do you also have a handcuff key?

8 A Yes.

9 Q When you said you were going to use bolt cutters to  
10 disconnect the individuals from the White House fence, why  
11 were you going to use the bolt cutters versus using your  
12 handcuff key?

13 A It was my understanding that the key hole to the  
14 handcuffs were in some way defeated by something being shoved  
15 in the keyhole which wouldn't allow the key to access the  
16 keyhole and release the handcuffs.

17 Q You said it was your understanding. How did you learn  
18 that information?

19 A Through another officer, police officer on the scene.

20 MR. FELDMAN: Object and move to strike the whole  
21 caboodle, Judge. That's really rank.

22 THE COURT: No. There was another officer who said  
23 something to you about this. Here's the question I have. Did  
24 you ever attempt to use your key to open these handcuffs?

25 THE WITNESS: I did not.

1 THE COURT: May I ask why not?

2 THE WITNESS: Someone else had, so I retrieved bolt  
3 cutters.

4 THE COURT: Someone else had? Had what?

5 THE WITNESS: Had attempted, I believe.

6 THE COURT: So some other officer -- Did you see  
7 that?

8 THE WITNESS: I do not recall. I just recall  
9 that -- hearing that the handcuff keys wouldn't work and that  
10 we needed the bolt cutters.

11 MR. FELDMAN: Now, can I move to strike. You recall  
12 hearing --

13 THE COURT: I will obviously take the testimony as  
14 to his observation.

15 MS. GEORGE: Your Honor, could the Government offer  
16 this, that it's not offered for the truth of the matter  
17 asserted.

18 THE COURT: It most certainly is. The truth of the  
19 matter is that someone put goo in the handcuffs to preclude  
20 using handcuff keys to get it out. That someone has not been  
21 before the Court. It is now a statement being offered for the  
22 truth of its contents when the person who made the statement  
23 is not available for cross-examination.

24 MS. GEORGE: Well, Your Honor, the Government is not  
25 offering it for that purpose. The Government is just offering

1 it to show why Officer Zarger used the bolt cutters.

2 THE COURT: It's hearsay.

3 MR. FELDMAN: I object to every single ruling that  
4 this honorable court makes thinking about it, considering it,  
5 she moves to reargue it.

6 THE COURT: It's okay. It's hearsay. Please move  
7 on.

8 Q (BY MS. GEORGE) Officer Zarger, did you in fact use bolt  
9 cutters to disconnect the 13 individuals from the White House  
10 fence?

11 A I did.

12 Q And did you have to use the bolt cutters to disconnect  
13 every individual that was on the, what you call, the masonry  
14 base at the White House fence?

15 A Yes.

16 MS. GEORGE: Showing Defense counsel what's been  
17 marked for identification purposes --

18 MR. FELDMAN: No objection. Without objection. All  
19 of it goes in, Judge, without objection.

20 MS. GEORGE: And for the record, previously provided  
21 to Defense counsel.

22 MR. FELDMAN: Yes, and I agree.

23 MS. GEORGE: As Government's Exhibits 9 through 23.  
24 I move to admit them at this time.

25 THE COURT: Hearing no objection, they'll be

1 admitted. Thank you.

2 (GOVERNMENT EXHIBITS 9 THROUGH 23 ADMITTED.)

3 Q (BY MS. GEORGE) Officer Zarger, I'm showing you  
4 Government's Exhibit No. 9. Are you shown in Government's  
5 Exhibit No. 9?

6 A I am.

7 Q And do you have anything in your hands in Government's  
8 Exhibit No. 9?

9 A It was one of the bolt cutters that were used to remove  
10 the handcuffs, handcuffs from the individual's wrists and the  
11 White House fence.

12 Q Are you referring to the --

13 MR. FELDMAN: Could he turn it around, Judge? Thank  
14 you.

15 Q (BY MS. GEORGE) You say bolt cutters, which object are  
16 you referring to?

17 A This right here, the red handled.

18 THE COURT: Red handled object.

19 THE WITNESS: Object.

20 THE COURT: Thank you.

21 MR. FELDMAN: We stipulate to bolt cutters.

22 THE COURT: Thank you.

23 MS. GEORGE: Your Honor, at this time I would like  
24 to move to the portion of the DVD where Officer Zarger  
25 disconnects Mr. Choi from the fence. I have a few questions



1 about that.

2 THE COURT: Yes. Go ahead.

3 (VIDEOTAPE PLAYED.)

4 Q (BY MS. GEORGE) Now, Officer Zarger, I'm showing you  
5 what's been admitted into evidence as Government's Exhibit No.  
6 2, and for the record, the frame that's reflected in the video  
7 at this point in time is the frame of Defendant Choi where he's  
8 perpendicular to the White House fence just to the left of the  
9 center frame of the White House fence.

10 Officer Zarger, do you see yourself in that frame?

11 A I do.

12 Q And what if anything are you doing at this point in time?

13 A Getting the bolt cutters around the portion of the  
14 handcuffs that were around the Defendant's wrist.

15 Q And is there another officer there assisting you?

16 A Yes.

17 Q Who is that officer?

18 A That is Officer Stoudamire.

19 Q Now, the frame that is shown, you can't really see the  
20 tip of the bolt cutters, correct?

21 A Correct.

22 Q Do you have an independent recollection as to what you  
23 specifically were trying to do at that moment in time when  
24 you're trying to disconnect the handcuffs?

25 A Yes. I was trying to cut the portion of the handcuffs so

1 that I could free Defendant's wrists from the handcuffs.

2 Q Okay. And was one or both hands connected to the White  
3 House fence at this point in time?

4 A At this point in time, one hand.

5 Q And do you recall which hand was connected to the fence  
6 with the handcuffs?

7 A I do not recall if it was the right or left.

8 Q And were you able to disconnect the handcuffs?

9 A Yes.

10 (VIDEOTAPE PLAYED.)

11 Q (BY MS. GEORGE) Now, Officer Zarger, were you at the  
12 White House sidewalk when Lieutenant LaChance gave warnings on  
13 that day?

14 A Yes, I was.

15 Q Okay. And could you please tell the Court whether you  
16 were there before the first warning was given?

17 A I was.

18 Q And could you please tell the Court where you were when  
19 you heard Lieutenant LaChance give the first warning?

20 MR. FELDMAN: Judge, Judge, cumulative. I mean,  
21 really. That's your -- this is your call, Judge. You decide.

22 THE COURT: All right. Let's -- easy. Could you  
23 show us a photograph maybe and he can show us where he was  
24 because I would like to know where he was.

25 MS. GEORGE: Your Honor, could I have him describe

1 it first. I don't know if I have a photograph of the area.

2 THE COURT: There is no still that shows where he  
3 is?

4 MS. GEORGE: I don't know.

5 Q (BY MS. GEORGE) Officer Zarger, could you please tell the  
6 Court where you were standing in relationship to Lieutenant  
7 LaChance when he gave the first warning?

8 A The first warning, I was to the -- which would be the  
9 west side, about 10 yards past the center of the White House  
10 center fence line and about ten yards out where I was  
11 retrieving the bolt cutters from the vehicle.

12 Q So were you actually on the White House sidewalk, based  
13 upon that description?

14 A No, I was in the -- on Pennsylvania Avenue, about ten  
15 yards west of when he issues the first warning.

16 Q Were you behind Lieutenant LaChance, to the right of  
17 Lieutenant LaChance?

18 A To the right of Lieutenant LaChance.

19 Q Okay. And you said you were to the right of him in  
20 Pennsylvania Avenue?

21 A Correct.

22 Q And could you please tell the Court how much distance was  
23 between where you were standing to the right of Lieutenant  
24 LaChance and where he was at his vehicle giving the warnings?

25 A He was probably about 15 yards to the right of Lieutenant

1 LaChance.

2 Q Okay.

3 MR. FELDMAN: Judge, I object to this gentleman's  
4 perception of your ability is totally irrelevant, totally  
5 different.

6 THE COURT: I'm trying to understand something.  
7 You're 15 yards from LaChance, right?

8 THE WITNESS: Yes.

9 THE COURT: All right. I thought your question was  
10 how far he was from the ledge.

11 MS. GEORGE: No, I said at the point where he was --

12 THE COURT: He's 15 yards from LaChance -- Okay. Go  
13 ahead.

14 Q (BY MS. GEORGE) Okay. And you're to the right of  
15 Lieutenant LaChance's vehicle where he's giving the warnings  
16 from, correct?

17 A During the first warning, yes.

18 Q Okay. And at that point in time, were there any people  
19 outside of the perimeter of where Lieutenant LaChance's  
20 vehicle was?

21 A Describe people. I mean, there were people that were  
22 outside. Are you talking the defendants or?

23 Q No, people. Just people.

24 A There were the people outside.

25 Q The perimeter, the yellow tape?

1 A Yes.

2 Q Okay. And were they talking, chanting, yelling?

3 A Yes.

4 Q Okay. And were, at this point in time, at the first  
5 warning, were you able to see the 13 individuals on the  
6 masonry base of the White House fence?

7 A Yes.

8 Q And were they chanting, talking?

9 A Yes, they were.

10 Q And could you hear what the people -- what the people on  
11 the masonry base at the White House fence were saying? Not  
12 what they were saying, but could you hear them?

13 A I could hear them, yes.

14 Q Could you hear the people chanting outside the yellow  
15 police line where you were standing at this point in time?

16 A Yes, I could.

17 Q Could you hear Lieutenant LaChance's first warning at  
18 that point in time?

19 A Yes, he was clear.

20 Q And could you hear exactly what he was saying?

21 A I could.

22 Q Officer Zarger, you referred to -- you referred to  
23 something called the masonry base. You recall using that term  
24 in your testimony?

25 A I do.

1 Q I'm going to give you a blue sticker with your first and  
2 last initial on it of R as in Robert and Z as in Zarger?

3 MR. FELDMAN: I'm going object. It's not the  
4 sidewalk. The only issue is the sidewalk.

5 THE COURT: What are you wanting to do, Ms. George?

6 MS. GEORGE: I just want him to identify what  
7 part --

8 THE COURT: You can do that. The objection is  
9 overruled. Go ahead.

10 Q (BY MR. FELDMAN) Using Government's Exhibit No. 3, can  
11 you tell the Court whether the structure you describe as the  
12 masonry base is actually in the -- in Government's Exhibit  
13 No. 3?

14 A It is.

15 Q Could you please take this blue sticker and put it on the  
16 structure that you've referring to.

17 A (Doing so.)

18 Q Thank you very much.

19 Now, I'm going to give you the same sticker with the  
20 initials "R.Z." on it and ask you to label again in  
21 Government's Exhibit 9 the structure in this photograph that  
22 you're referring to as the masonry base?

23 MR. FELDMAN: I can't hear anybody because it's too  
24 noisy in here.

25 THE COURT: They are doing some drilling upstairs.

1 It's going to stop now.

2 MS. GEORGE: Court's indulgence.

3 (PAUSE.)

4 Q (BY MS. GEORGE) Officer Zarger, as a U.S. Park police  
5 officer, do you have to have hearing tests?

6 A I do.

7 Q And how often do you have those hearing tests?

8 A Once a year.

9 Q Okay. And when was the last time you had a hearing test  
10 in relationship to November 15<sup>th</sup>, 2010?

11 A It would have been in May of 2010.

12 Q And did any medical official indicate whether you had any  
13 problem with your hearing?

14 A No, I passed the test.

15 Q And is that test --

16 MR. FELDMAN: I object. This gentleman's hearing is  
17 not in issue.

18 THE COURT: No, I think it is in issue. As I  
19 understand it, he's standing near closer to LaChance and says  
20 he could hear him. Are you suggesting that he moved in  
21 another direction before the second and third warning?

22 MS. GEORGE: No. I'm suggesting, Your Honor, that  
23 he could hear -- the warnings could be heard from very  
24 different points even with the crowd noise.

25 THE COURT: You made that point. That's fine.

1 Q (BY MS. GEORGE) And do you have to have a certain level  
2 of hearing to be an officer with the U.S. Park Police, Officer?

3 A You do.

4 Q And what is that?

5 A I don't know.

6 Q But you indicated you passed the test?

7 A All I know is I passed the test, yes.

8 MS. GEORGE: No further questions at this time.

9 MR. FELDMAN: Nothing, sir.

10 THE COURT: Thank you. Please step down.

11 All right. It is 5:15. Ms. George, where are you  
12 in your presentation of the evidence, please.

13 MS. GEORGE: Court's indulgence, Your Honor.

14 (PAUSE.)

15 MS. GEORGE: The Government has to check whether one  
16 of its potential witnesses is still in the witness --

17 THE COURT: How many witnesses do you have left,  
18 ma'am?

19 MS. GEORGE: Possibly just one additional witness,  
20 Your Honor.

21 THE COURT: All right. I would suggest that we  
22 adjourn for the day and begin again at 9:30. I would just  
23 point out to counsel tomorrow afternoon, I would say I have my  
24 other criminal duties to attend to, and as it presently  
25 stands, we have two detention hearings on tomorrow. I don't



1 know whether they will go for hearing or not, but it's  
2 something to bear in mind.

3 MR. FELDMAN: Oh, okay. We only have one more day  
4 scheduled. It looks like it's not going to go, Judge. I  
5 mean, you work really fast.

6 THE COURT: "Sufficient for the day is the evil  
7 thereof," so the good book says.

8 MR. FELDMAN: Then let's talk about the witnesses.  
9 I excused -- I subpoenaed Sergeant Adamichik, and he was here  
10 and he was very earnest, and I don't know if you know this or  
11 not but he has very serious issues. His child --

12 THE COURT: You don't have to put it on the record.  
13 I'll take your word for it.

14 MR. FELDMAN: Serious personal things, and I excused  
15 him. But I didn't know that he was the guy who had gotten his  
16 orders from LaChance or was very involved with LaChance, so  
17 unfortunately, I need to get him here, Judge.

18 THE COURT: All right.

19 MR. FELDMAN: So I mean, it's after 5:00 o'clock. I  
20 can call liaison but it's doubtful.

21 THE COURT: Yeah. Well, if we have to go over for a  
22 day or so so we can get him subpoenaed, all right.

23 MR. FELDMAN: Okay. And also Officer Hodge, he was  
24 here all day long. I didn't excuse him. He asked to be  
25 excused.

1 THE COURT: He hasn't been excused. He's only  
2 excused by me. He's not excused. He'll be here.

3 MR. FELDMAN: Okay. And then Officer Laska, I did  
4 subpoena him but he did not respond. He did not come here  
5 today, I think. I have to go through the motions, you know.

6 THE COURT: Let me know -- Laska?

7 MR. FELDMAN: L-a-s-k-a. He's very relevant. You  
8 saw him or heard him and I want, Judge --

9 THE COURT: Now, the last few of these people of  
10 Hodge and Laska, they are under subpoena, right?

11 MR. FELDMAN: Yes.

12 MS. GEORGE: According to -- let me just put this on  
13 the record, Your Honor. Sergeant Tolson, the U.S. Park Police  
14 liaison officer as we discussed here on August 26<sup>th</sup>, I gave  
15 that information to Mr. Feldman. I got an e-mail from  
16 Mr. Tolson, Sergeant Tolson that Mr. Feldman contacted him and  
17 he placed those individuals on subpoena. Mr. Feldman has  
18 Sergeant Tolson's cell phone number. He can contact him.  
19 He's available after 5:00 o'clock.

20 MR. FELDMAN: I will do that.

21 THE COURT: If you have problems, you can't get  
22 them, we'll make arrangements even if we have to go another  
23 day another time.

24 MS. GEORGE: For the record, Sergeant Tolson told me  
25 he had a different telephone number today because his original

1 cell phone is not working. I will give that to Mr. Feldman.

2 MR. FELDMAN: I appreciate that, too. And then I  
3 have two witnesses in the case.

4 THE COURT: Let's see how much we can get  
5 accomplished tomorrow.

6 MR. FELDMAN: What time you want us here?

7 THE COURT: 9:30.

8 MR. FELDMAN: Yes, sir. Thank you, sir.

9 THE COURT: Ms. George, you mentioned this in this  
10 morning's argument. It is the names of two cases of the D.C.  
11 Circuit. Give me the citations so I can read them.

12 MS. GEORGE: It's *Goldin* and *Poocha*, and they are  
13 cited in the Government's motion.

14 THE COURT: *Goldin* and *Poocha*?

15 MS. GEORGE: Yes.

16 MR. FELDMAN: May I give you two cases that I didn't  
17 cite so you can have your staff study and work on it already?

18 THE COURT: My staff consists of me and a pencil.

19 MR. FELDMAN: This is really important, Judge, and  
20 I'll gave it to Ms. George looking over my shoulder. The  
21 first is *City of Chicago* versus -- I'm sorry. *City of Chicago*  
22 *versus Jesus Morales*, and it's Supreme Court of United States  
23 and it was decided on June 10<sup>th</sup>, 1999. And has to do --

24 THE COURT: You going to give me copies?

25 MR. FELDMAN: I'll bring them tomorrow, how's that?

1 THE COURT: What was it that you have -- just give  
2 me the citation.

3 MR. FELDMAN: You want the official cite or the  
4 unofficial cite?

5 THE COURT: Just the U.S. cite.

6 MR. FELDMAN: 527 U.S. 41.

7 THE COURT: Thank you.

8 MR. FELDMAN: 1999.

9 MS. GEORGE: 1999.

10 MR. FELDMAN: Very important, about due -- about  
11 notice, about what -- doing stuff wrong. I don't know what  
12 defense used. You know what I'm talking about, right?

13 THE COURT: Yeah, I guess so.

14 MR. FELDMAN: About notice about you committing the  
15 crime. Notice that you're committing disorderly conduct, for  
16 example.

17 THE COURT: I understand. That's one. You had  
18 another one.

19 MR. FELDMAN: One more, Judge. And this is *New York*  
20 *Times Company versus Sullivan*.

21 THE COURT: Famous *Sullivan* case.

22 MR. FELDMAN: Almost doesn't need a citation, 376  
23 U.S. 254. And that's about robust speech. That's all.

24 THE COURT: I understand.

25 MR. FELDMAN: Then one more about prosecutorial

1 misconduct, Myers. This is the most important. We just found  
2 out the person behind this whole operation, and that's  
3 Randolph Myers who's the solicitor. Now, I definitely want to  
4 call him. Again, he's a lawyer, and in my jurisdiction where  
5 I'm used to, if there is a lawyer from DOJ, the prosecutor  
6 does me the courtesy of getting him here at his convenience.

7 MS. GEORGE: Your Honor, just for the record, as I  
8 understand it, if a party wants to subpoena a United States  
9 Attorney, there's something called the *Touhy* regulation.

10 THE COURT: The way this works is as follows. There  
11 are -- he's a Department of Interior. They have what is known  
12 as *Touhy*. *Touhy* regulations specify the circumstances under  
13 which employees can be made to testify. Independent of that,  
14 by virtue of a circuit decision written by Judge Cavanaugh and  
15 it's indicated that the United States is a subject to --  
16 officials of the United States are subject to Rule 45 and  
17 accordingly they can be subject to subpoena, so therefore, you  
18 can subpoena Mr. Myers.

19 To alleviate that problem, is it possible for the  
20 United States Attorney to ask Mr. Myers if he could join us  
21 tomorrow as a courtesy to me?

22 MS. GEORGE: I can do that on behalf of the Court,  
23 Your Honor, yes.

24 THE COURT: Please.

25 MR. FELDMAN: Thank you, Ms. George. Thank you,

1 Your Honor. Thank you, Ms. Coln. And thank you, Ms. Court  
2 Reporter.

3 THE COURT: Thank you. Good day. 9:30 tomorrow.  
4 You can leave your exhibits up here. You can leave the  
5 jacket. Thank you. We are in recess. You're excused.

6 (PROCEEDINGS END AT 5:20 P.M.)

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8 **CERTIFICATE OF REPORTER**

9 I, Catalina Kerr, certify that the foregoing is a  
10 correct transcript from the record of proceedings in the  
11 above-entitled matter.

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Catalina Kerr

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